

1-1-1998

# Purchasing Real Estate in the Bahamas

Thomas Katheder

Follow this and additional works at: <http://repository.law.miami.edu/umialr>

---

## Recommended Citation

Thomas Katheder, *Purchasing Real Estate in the Bahamas*, 29 U. Miami Inter-Am. L. Rev. 197 (1998)  
Available at: <http://repository.law.miami.edu/umialr/vol29/iss1/8>

This Article is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

# PURCHASING REAL ESTATE IN THE BAHAMAS

THOMAS KATHEDER\*

I.	INTRODUCTION .....	199
II.	OVERVIEW OF BAHAMIAN GOVERNMENTAL AND LEGAL SYSTEM .....	201
III.	REAL PROPERTY—BACKGROUND AND HISTORY.....	204
IV.	AGREEMENT FOR SALE AND PURCHASE .....	211
	A. <i>The Parties</i> .....	212
	B. <i>The Property</i> .....	214
	C. <i>Deposit</i> .....	215
	D. <i>Title and Conveyance</i> .....	217
	1. English System of Title Assurance .....	217
	2. Establishing Good and Marketable Title .....	218
	3. Requisitions on Title.....	223
	4. Attorney's Opinion of Title; Title Insurance.....	226
	E. <i>Completion</i> .....	228
	F. <i>Non-Bahamian Purchasers</i> .....	229

---

\* © Copyright 1998. Thomas Katheder is a member of The Florida Bar and an Executive Counsel in the Legal Department at Walt Disney World Co., Lake Buena Vista, Florida. The views or statements expressed in this article do not necessarily reflect those of Walt Disney World Co. or any of its affiliates. The author wishes to thank Anthony N. Klonaris, Esq., of the firm of Callenders & Co., Nassau, Bahamas, for reviewing this article and providing useful comments and suggestions.

1.	International Persons Landholding Act.....	229
2.	Business License .....	230
3.	Exchange Control .....	231
G.	<i>Bahamian Taxation Structure</i> .....	232
1.	Stamp Duty.....	233
2.	Real Property Tax.....	235
3.	Business License Fees.....	236
H.	<i>Real Estate Brokers</i> .....	239
I.	<i>Attorneys</i> .....	240
J.	<i>Development and Construction Matters</i> .....	241
1.	Building and Construction .....	241
2.	Town Planning.....	243
3.	Environmental Matters.....	243
K.	<i>Governmental Concessions</i> .....	244
L.	<i>Special Contingencies</i> .....	245
M.	<i>Execution of the Agreement</i> .....	246
V.	CONCLUSION.....	246
VI.	APPENDIX A: COMPARATIVE GLOSSARY OF SELECTED AMERICAN AND BAHAMIAN REAL ESTATE TERMINOLOGY.....	248
VII.	APPENDIX B: AGREEMENT FOR SALE AND PURCHASE OF VACANT LAND.....	249

## I. INTRODUCTION

"Bahamian real estate values have been asleep for twenty years, but they're finally coming back,"<sup>1</sup> declares Peter Christie, scion of H. G. Christie, Ltd., perhaps the most prominent real estate firm in The Bahamas.<sup>2</sup> Commercial real estate activity and values in The Bahamas have accelerated in the past few years, most notably with the opening of a new \$140 million resort hotel and casino in 1994, a \$300 million expansion project on Paradise Island announced in December of 1995, and the recent acquisition of Bahamian islands by two major cruise ship lines.<sup>3</sup>

Although some of this increased real estate activity is due to general improvements in Western economies since 1991, the increase in activity is primarily due to a boom in foreign tourism (much of it from the United States).<sup>4</sup> Undoubtedly, however, a

---

1. Interview with Peter Christie, President of H. G. Christie, in Nassau, Bahamas (Apr. 9, 1996).

2. H. G. Christie, Ltd. was founded in 1922 by Mr. (later Sir) Harold G. Christie, who was born in Nassau in 1896. According to one author, Sir Harold Christie's unwavering goal "was nothing less than to turn this insignificant community [New Providence, the island in which Nassau is located] into the new Mecca of the world's rich, a metropolis gorgeous enough and luxurious enough to draw the international set away from the Riviera and Biarritz and Palm Beach." MICHAEL CRATON, *A HISTORY OF THE BAHAMAS* 255 (3d ed. 1986).

3. Several hotels located at Cable Beach, New Providence, have recently changed hands and undergone major renovation. Sun International Hotels Ltd. (Sun) opened the Atlantis Resort & Casino, a (U.S.) \$140 million resort hotel and casino on Paradise Island, in December 1994. In December of 1995, Sun announced plans to further develop its holdings on Paradise Island with a (U.S.) \$300 million expansion project. Registration Statement (No. 33-80477) of Sun International Hotels Limited filed with U.S. Securities and Exchange Commission at 3-4. A little over a year later, The Walt Disney Company announced its plans to develop a cruise ship port on Gorda Cay, an island of The Bahamas purchased by one of its business units—Disney Cruise Line. Jessica Robinson, *Disney Deal to Boost Tourism*, TRIBUNE (Nassau), Mar. 11, 1996, at A1. Holland America Line announced on December 30, 1996 that it had acquired Little San Salvador, another island of The Bahamas, and that it too planned to develop a cruise ship port on its island. Pauline Seymour, *Cruise Line to Build Private Port*, TRIBUNE (Nassau), Dec. 30, 1996, at A1. In 1995, visitor spending in The Bahamas totaled nearly (Bah.) \$1.35 billion, breaking the previous record of (Bah.) \$1.33 billion in 1990. BAHAMAS HANDBOOK AND BUSINESSMAN'S ANNUAL 134 (1997) [hereinafter BAHAMAS HANDBOOK].

4. J. Kevin Higgins, *The Bahamian Economy: An Analysis* 12-19 (1994). [T]he major source of the Bahamas post-war [World War II] economic upsurge has not arisen from any structural transformation in the production base of the economy, or from the exploitation of a valuable mineral resource, as has been the case in some developing countries, but from the extraordinary expansion of a service industry, viz., tourism which is now the main basis of economic life in the country.

RAMESH F. RAMSARAN, *THE MONETARY AND FINANCIAL SYSTEM OF THE BAHAMAS*:

great deal of the credit for this turnaround also belongs to Bahamian Prime Minister, the Right Honourable Hubert A. Ingraham.<sup>5</sup> Prime Minister Ingraham implemented his National Investment Policy in 1993 and has actively supported the Policy since its inception.<sup>6</sup> The National Investment Policy has been implemented primarily through new legislation intended to encourage legitimate investment<sup>7</sup> and to discourage illicit activity.<sup>8</sup>

---

GROWTH, STRUCTURE, AND OPERATION 17 (1984). The annual total of "stopover" visitors (i.e., visitors who do not arrive via cruise ship and who spend at least one night in The Bahamas) has steadily increased, and the majority of them arrive from the United States. Ramesh Ramsaran, *The Bahamas: An Assessment of Post-Independence Economic Experience*, in MODERN BAHAMIAN SOCIETY 109, 111 (Dean W. Collinwood & Steve Dodge eds., 1989). The annual total of arriving cruise ship passengers, however, has declined from 2,139,383 in 1992 to 1,543,495 in 1995. THE CENTRAL BANK OF THE BAHAMAS, 1995 ANNUAL REPORT & STATEMENT OF ACCOUNTS 6-7 (1995); see also INTERNATIONAL MONETARY FUND, THE BAHAMAS—RECENT ECONOMIC DEVELOPMENTS (1996). The Bahamian government has responded to the decrease in cruise ship passenger arrivals with several incentives, including a graduated reduction in departure taxes, permission to operate on-board casinos for cruise ships that remain in port for 18 hours or more, and the removal of the ban on operation of retail shops on Sunday in Nassau and Freeport. See Cruise Ships (Overnighting Incentives) Act, 1995 (Bah.).

5. Prime Minister Ingraham, leader of the Free National Movement political party, first became Prime Minister following the 1992 Bahamian national election, which resulted in the defeat of the Progressive Liberal Party, whose candidates had held the majority of seats in the Bahamian Parliament since 1968. He was re-appointed Prime Minister following the 1997 national election. For the story of the Progressive Liberal Party's rise to power and the movement toward political independence, see COLIN A. HUGHES, *RACE AND POLITICS IN THE BAHAMAS* (1981).

6. The Policy is administered by the Bahamas Investment Authority, a governmental agency. The "Economic Policy" portion of the Policy is as follows:

The Government of the Commonwealth of The Bahamas is committed to building an economic environment in which free enterprise can flourish; where the Government assumes its proper role as regulator and facilitator of economic development; where the ideals of transparency [i.e., openness in government], fair play and equality of treatment are paramount; and a policy that maintains a stable society in which all people are afforded the opportunity to realize their maximum potential. In this regard, the National Investment Policy is designed to support an investment friendly climate; guarantees the complementarity [sic] of Bahamian and overseas investments; fosters appropriate linkages with all sectors of the economy, in particular, the tourism and financial services sectors; encourages the exploitation of our natural resources in an environmentally sound and sustainable manner; provides for the maximum level of employment; guarantees an acceptable level of economic security and generally foster[s] the economic growth and development of The Bahamas.

BAHAMAS INVESTMENT AUTHORITY, THE COMMONWEALTH OF THE BAHAMAS NATIONAL INVESTMENT POLICY 7 (n.d.). [hereinafter NATIONAL INVESTMENT POLICY].

7. See, e.g., Cruise Ships (Overnighting Incentives) Act.

8. See, e.g., Money Laundering (Proceeds of Crime) Act, 1995 (Bah.).

If the present trend of increased real estate activity continues, foreign investment in Bahamian real estate will also likely expand. The purpose of this Article is to assist non-Bahamian legal practitioners, especially American counsel, who might find themselves representing just such an investor.<sup>9</sup> Part II provides an overview of the Bahamian governmental and legal system. Part III provides an historical background of real property in The Bahamas. Part IV discusses legal and business issues important to the purchaser of Bahamian real estate. In addition, Appendix A provides a comparative glossary of American and Bahamian real estate terminology and Appendix B provides a sample agreement for the sale and purchase of vacant land in The Bahamas.

## II. OVERVIEW OF BAHAMIAN GOVERNMENTAL AND LEGAL SYSTEM

The Bahamas became politically independent and entered the Commonwealth of Nations<sup>10</sup> on July 10, 1973, following two and one-half centuries of British colonial rule.<sup>11</sup> However, Queen Elizabeth II remains the symbolic head of state<sup>12</sup> and is repre-

---

9. Interest in the Bahamian asset protection trust (APT) is growing among American investors, professionals and entrepreneurs. An APT is a device used to shelter assets from execution by possible future creditors. Under the Fraudulent Dispositions Act of 1991, any asset placed within an APT more than two years prior to the commencement of any litigation against the trust beneficiary is not subject to levy or execution. Fraudulent Dispositions Act (1991) (Bah.). Regarding asset protection trusts generally, see Gideon Rothschild, *Establishing and Drafting Asset Protection Trusts*, 23 EST. PLAN. 65 (1996).

10. The Commonwealth of Nations is "a free association of sovereign, independent states," formerly colonies and dependencies of the British Empire. J.D.B. MILLER, *THE COMMONWEALTH IN THE WORLD* 12 (1958); see also NICHOLAS MANSENGH, *THE COMMONWEALTH EXPERIENCE* (1969).

11. CRATON, *supra* note 2, at 274-88. The Bahamas remained a Crown colony until 1964, when the United Kingdom granted a new constitution providing for ministerial self-rule and internal self-rule. *Id.* The Bahamas became politically independent in 1973. *Id.* at 285-88.

12. See BAH. CONST. ch. VI, § 71(1). The Queen's symbolic role in the Commonwealth has been described as follows:

The Queen ... is to be the symbol of the free association between the members [of the Commonwealth], whether those members have monarchical systems or not; in performing this function the Queen is known as Head of the Commonwealth. The office (if it can be called such) has no powers or activities attached to it; nor does the Queen, as Head of the Commonwealth, have any Ministers to advise her. She is a symbol which depends for its effectiveness upon the continuance of free association between the member-nations.

MILLER, *supra* note 10, at 58-59. The Queen's formal style and title as Head of the

sented in The Bahamas by the Governor-General, currently Sir Orville Turnquest, G.C.M.G., Q.C., who is appointed by the Queen and serves at Her Majesty's pleasure.<sup>13</sup> The Bahamas is governed by the Prime Minister, who is the leader of the majority political party in the Bahamian Parliament, and of the members of his Cabinet (i.e., Ministers).<sup>14</sup>

The Cabinet consists of the Prime Minister and at least eight other members, including the Attorney General.<sup>15</sup> All Ministers must also be members of the Bahamian Parliament and the Prime Minister and Minister of Finance must be members of the House of Assembly.<sup>16</sup> It is noteworthy for American practitioners that in The Bahamas, as elsewhere in the Commonwealth of Nations, ministers of the government have far more discretion in administering and managing official matters than their counterparts in the executive branch of the U.S. federal government.<sup>17</sup>

The Bahamian Parliament is a bicameral legislature, consisting of the Senate and the House of Assembly. The Senate is a sixteen-member body, nine of whom are appointed by the Governor-General acting in accordance with the advice of the Prime Minister.<sup>18</sup> The House of Assembly is elected by popular vote at least once every five years, and currently consists of forty seats.<sup>19</sup>

---

Commonwealth is different among the various members of the Commonwealth and is established in consultation with the member nation. *Id.* at 60. Her formal title in The Bahamas is: "Elizabeth the Second, By the Grace of God Queen of the Commonwealth of The Bahamas and of Her Other Realms and Territories, Head of the Commonwealth." JERROLD M. PACKARD, *THE QUEEN AND HER COURT: A GUIDE TO THE BRITISH MONARCHY TODAY* 202 (1981).

13. BAH. CONST. ch. IV, § 32.

14. *Id.* ch. VI, §§ 72-73.

15. *Id.* ch. VI, § 72(2).

16. *Id.* ch. V, pt. I, § 38 and ch. VI, § 73(1)-(2).

17. Whereas, because of the separation of powers and other American constitutional mandates, it seems that virtually every move of the heads of U.S. federal agencies is dictated by statute or regulation (*see generally* KENNETH CULP DAVIS & RICHARD J. PIERCE, JR., *ADMINISTRATIVE LAW TREATISE* (3d ed. 1994)), many Bahamian statutes provide, for instance, that a particular minister may make a decision based upon his or her belief that such decision is in the best interests of The Bahamas. *See, e.g.*, The Bahamas Investment Incentives Act, 1991, § 5 (Bah.).

18. Four of the members are appointed by the Governor-General on the advice of the leader of the political opposition and the remaining three are appointed by the Governor-General on the advice of the Prime Minister after consultation with the opposition leader. BAH. CONST. ch. V, pt. II, § 39(3)-(4).

19. *See id.* ch. V, pt. III, § 46(1)-(2).

The Bahamian Constitution, the supreme law of the land,<sup>20</sup> is based largely upon the unwritten Westminster model Constitution of the United Kingdom. It proclaims The Bahamas to be a free and democratic sovereign state, guarantees fundamental human rights such as freedom of expression and assembly, and prohibits deprivation of property without due process of law and compensation.<sup>21</sup> The law in The Bahamas is based upon the common law of England as it existed in 1799, except as changed by Bahamian statute and decisional law.<sup>22</sup>

Local government in The Bahamas was previously administered by Family Island Commissioners.<sup>23</sup> However, fulfilling a major campaign promise by the incumbent political party (Free National Movement), the Bahamian Parliament enacted a new system of local government under the Local Government Act in 1996.<sup>24</sup> The goal of the legislation "is to give more power to Family Island local authorities to make decisions on public works, licences, town planning, port matters and the like."<sup>25</sup> The Act divides the Family Islands into twenty-three local districts.<sup>26</sup> Each is administered by a district council whose members are

---

20. *Id.* ch. I, § 2; see also Note, *The Legal System of The Bahamas*, 40 ST. LOUIS U. L.J. 1325 (1996). The American notion of a law being declared unconstitutional by the judiciary is foreign to English jurisprudence. In a case conceptually reminiscent of *Marbury v. Madison*, 5 U.S. 137 (1803), the first major test of the "Supremacy Clause" of the independent Bahamian Constitution was a case in which the Judicial Committee of the Privy Council declared that a portion of the Bahamas Nationality Act, 1973, was invalid (i.e., *ultra vires*) under the Bahamian Constitution. Attorney Gen. v. Ryan, [1980] 1 App. Cas. 718 (P.C. 1979) (appeal taken from Bah.). The decision was viewed by many at the time as an attack on the sovereignty of the Bahamian Parliament. See SIR LEONARD KNOWLES, *ELEMENTS OF BAHAMIAN LAW* 6-7 (2d ed. ca. 1989).

21. BAH. CONST. pmbl., chs. I, III.

22. Section 2 of the Declaratory Act, provides that:

[t]he common law of England, in all cases where the same hath not been altered by any of the Acts or Statutes enumerated in the Schedule to this Act or by any Act (except so much thereof as hath relation to the ancient feudal tenures, to outlawries in civil suits, to the wager of law or of battle, appeals of felony, writs of attainment and ecclesiastical matters), is, and of right ought to be, in full force within The Bahamas, as the same now is in that part of Great Britain called England.

Declaratory Act, ch. 4, § 2 (1799) (Bah.).

23. Local Government Administration Act, ch. 23, § 5 (1926) (Bah.). Islands in The Bahamas other than New Providence are commonly referred to as "Family Islands" or "Out Islands."

24. Local Government Act, 1996 (Bah.).

25. BAHAMAS HANDBOOK, *supra* note 3, at 499 (quoting Newton R. McDonald, Under Secretary/Administrator, Department of Local Government). The legislation is modeled upon local government legislation in Malta. *Id.*

26. Local Government Act, § 3, sched. 1.



elected by popular vote every three years.<sup>27</sup> The larger districts are further divided into "town areas," which are overseen by town committees.<sup>28</sup>

The Bahamian judiciary consists of the following: magistrates' courts, which have jurisdiction over minor civil and criminal matters;<sup>29</sup> the Bahamas Supreme Court, which is a court of general civil and criminal jurisdiction;<sup>30</sup> and the Court of Appeal, which is the highest tribunal in the country, and holds four sessions per year.<sup>31</sup> There is also a right of appeal to the Judicial Committee of the Privy Council in England from decisions of the Bahamas Supreme Court regarding fundamental rights under the Bahamian Constitution and from certain decisions of the Court of Appeal.<sup>32</sup>

### III. REAL PROPERTY—BACKGROUND AND HISTORY

Though the practical significance of tenure in The Bahamas, as elsewhere in the Commonwealth of Nations, is virtually nil, all land in The Bahamas continues to be held, mediately or immediately (i.e., directly or indirectly), of the Crown.<sup>33</sup> Generally,

---

27. *Id.* §§ 17-22.

28. *Id.* § 5.

29. See Magistrates Act, ch. 42, §§ 3-48 (1896) (Bah.).

30. See BAH. CONST. ch. VII, pt. I, §§ 93-97.

31. See *id.* ch. VII, pt. II, §§ 98-103. Although all judicial opinions are usually considered public record in The Bahamas, these opinions have not been consistently published. Since 1971, most opinions of the Bahamas Supreme Court and the Court of Appeal have been reproduced in Law Reports of The Bahamas, published by Butterworths. Even this compilation, however, tends to run several years in arrears (e.g., the most recent volume, published in 1995, includes decisions through 1990). One may go to the Bahamas Supreme Court or Court of Appeal and request copies of decisions rendered, but these decisions are not indexed or referenced by legal or statutory subject matter, thus making legal research of pre-1971 Bahamian judicial decisions extremely difficult. By contrast, opinions of the Judicial Committee of the Privy Council have been continuously published.

32. *Id.* ch. VII, pt. III, §§ 104-06. The formal name of this institution is "Her Majesty's Most Honourable Privy Council." MICHAEL DE-LA-NOY, *THE HONOURS SYSTEM* 82 (1985).

33. SIR LEONARD KNOWLES, *BAHAMIAN LAW OF REAL PROPERTY* 4 (ca. 1989). Principles of tenure are derived from English common law. A.W.B. SIMPSON, *A HISTORY OF THE LAND LAW* 1-2 (2d ed. 1986). According to Knowles, the only remaining incidents of tenure in The Bahamas "are a small occasional quit rent, and a right of escheat, which seldom occurs." KNOWLES, *supra* at 26. Another source, however, indicates that quit rents were abolished in The Bahamas by statute in 1846. Michael Craton, *White Law and Black Custom: The Evolution of Bahamian Land Tenures*, in *LAND AND DEVELOPMENT IN THE CARIBBEAN* 92 (Jean Besson & Janet Momsen eds., 1987). One should not

the tenure that is said to exist in The Bahamas, as in the United Kingdom, is "free and common socage."<sup>34</sup>

The genesis of title in The Bahamas was a royal grant from the British Crown, beginning with an abortive grant to Sir Robert Heath in 1629, and followed by a grant from King Charles II in 1670 to six of the eight Lord Proprietors of the Carolinas.<sup>35</sup> Among the dubious legacies left by the Lord Proprietors when the Crown resumed political control of The Bahamas in 1718 was enormous confusion over land titles and boundaries.<sup>36</sup> To ameliorate this confusion, the first legislative assembly under the

---

confuse holding land of the Crown with "Crown land." The former refers merely to tenure, while the latter refers to land owned outright by the Bahamian government. Notwithstanding the political independence of The Bahamas since 1973, land owned by the Bahamian government is still referred to as Crown land. This is more than just a post-colonial anachronism, since the Queen of England remains the titular head of The Bahamas. Thus, deeds of land from the Bahamian government are granted in the name of Elizabeth II ... Queen of the Commonwealth, etc. (see MILLER, *supra* note 10), and are executed on behalf of the government by the Prime Minister in his capacity as the Minister of Lands. See Conveyancing and Law of Property Act, ch. 123, § 59 (1909) (Bah.).

34. KNOWLES, *supra* note 33, at 26. Simpson explains the origin of this tenure in English common law:

Into the spacious category of socage were placed those tenures which were tenures in name only, and with the disappearance of the realities of feudal tenure from society it was natural that socage should in the end become the sole surviving tenure of any importance; today, it is still the law that all land is 'held', and since it must be held by some tenure we say it is held in free [i.e., of services] and common [i.e., not subject to customary feudal incidents or duties] socage.

SIMPSON, *supra* note 33, at 13.

35. 1 MICHAEL CRATON & GAIL SAUNDERS, ISLANDERS IN THE STREAM: A HISTORY OF THE BAHAMIAN PEOPLE 66, 94 (1992). In 1670, Charles II, King of England, granted the Bahamian Islands to the "Lord Proprietors" in "free socage" following the pattern of the King's manor of East Greenwich in Kent. *Id.* This form of tenure was common for English royal grants and charters in the New World. CORNELIUS J. MOYNIHAN, INTRODUCTION TO THE LAW OF REAL PROPERTY 25 (1962). For instance, the charter of 1606 by King James I granting the Virginia Colony to the Virginia Company of London stated similarly that "all the lands, tenements, and hereditaments" were to be held "as of our Manor at East Greenwich in the County of Kent, in free and common socage [sic]." W. STYTT ROBINSON, JR., MOTHER EARTH—LAND GRANTS IN VIRGINIA, 1607-1699, at 11 (1957).

36. The Royal Commission appointing Woodes Rogers, the first Royal Governor of The Bahamas, recited that The Bahamas had "fallen into great disorder and Confusion" due to the "great neglect of the Proprietors." Statute Law of The Bahama Islands (1929), Public Records Office, Nassau, Bahamas (quoting Royal Commission to Woodes Rogers as Governor, Feb. 5, 1717-1718). A study undertaken in 1773 by Thomas Shirley, later Governor of Dominica, revealed that only a fraction of lands in The Bahamas that were occupied or presumably "owned" were held with any sort of title. CRATON & SAUNDERS, *supra* note 35, at 165-66. This circumstance was further complicated by the fact that the Lord Proprietors and their agents had carried back to England any land or survey records they had. *Id.*

British royal governors passed a law entitled "An Act for Settling Claims and the Payment of Quit Rents" in 1729.<sup>37</sup> This legislation, along with various amendments enacted in the 1730s, marked the first established procedures designed to authenticate land claims, provide for surveys and plats, and record land sales transactions.<sup>38</sup> Not long after, the Registry Act of 1764 was enacted requiring the registration of deeds or conveyances of all "lands, tenements or hereditaments."<sup>39</sup> In 1805, a more comprehensive Registration Act was passed, which provided that registered documents of title had priority over all others, including those of a prior date.<sup>40</sup>

Following the migration of American Loyalists to The Bahamas in the 1780s, the Crown acquired title to a considerable amount of unoccupied land and purchased the remaining rights of the heirs and claimants of the Lord Proprietors in 1787.<sup>41</sup> Under a 1785 proclamation, each head of household, American Loyalist or otherwise, was entitled to a grant of forty acres of land and each dependent ("white" or "slave") was entitled to twenty acres.<sup>42</sup> Quit rents at the rate of two shillings per 100 acres were waived for the first ten years.<sup>43</sup> As a result of both this proclamation and the reforms regarding title and deed registration, there was, in the words of historian Michael Craton, "an explosion of land grants and claims between 1785 and 1790," followed by a steady stream of grants in the five year period that followed.<sup>44</sup> These grants covered almost all useable land in the settled islands. Following the expiration of the ten-year abeyance of quit rents, however, many land owners fell into arrears

---

37. CRATON & SAUNDERS, *supra* note 35, at 136.

38. *Id.*

39. Craton, *supra* note 33, at 91.

40. *Id.*

41. *Id.*

42. CRATON & SAUNDERS, *supra* note 35, at 191-93. The proclamation was intended, at least in part, as a reward to King George III's "[l]oyal [s]ubjects who have been residents in any of the Colonies or Provinces now the United States of America." *Id.* at 193.

43. *Id.* at 191, 193.

44. *Id.* at 191-92. Among the first official grants were those issued in 1788 by Lord Dunmore—previously the last royal governor of Virginia—who issued a grant of 5355 acres to himself and another grant of 1173 acres to his son. SANDRA RILEY, *HOMEWARD BOUND: A HISTORY OF THE BAHAMA ISLANDS TO 1850 WITH A DEFINITIVE STUDY OF ABACO IN THE AMERICAN LOYALIST PLANTATION PERIOD* 181 (1983). One Thomas Brown received 6000 acres, the largest single grant. *Id.* The average grant has been estimated at 382 acres. CRATON & SAUNDERS, *supra* note 35, at 192.

with respect to their quit rent obligations, and according to one estimate, over 100,000 acres of land reverted to the Crown by 1835.<sup>45</sup> Quit rents were finally abolished in 1846.<sup>46</sup>

Notwithstanding the many statutory reforms and the Crown's periodic re-granting of lands following the reversion of the lands encumbered by unpaid quit rents, at the beginning of the present century the status of title to many lands in The Bahamas was unclear at best. According to Craton:

By the twentieth century the condition of Bahamian land tenure was almost anarchic. Thanks to incomplete and inaccurate surveying, to incomplete registration and a bewildering range of documentary and customary claims, many of them conflicting and overlapping, those who wished to purchase and develop land were often faced with almost insuperable difficulties.<sup>47</sup>

As tourism in The Bahamas grew after the Second World War, some parcels of land previously regarded as worthless coral or limestone rock suddenly became quite valuable to entrepreneurs and others for the development of hotels, marinas, shops, restaurants, and other commercial facilities, provided appropriate assurances of title could be obtained. Given the chaotic state of Bahamian land titles, the Quieting Titles Act was enacted in 1959 to provide a statutory procedure for title clearance.<sup>48</sup> Soon after its enactment, numerous petitions were filed under the Act by land claimants—often family member against family member—who wished to sell long-held family holdings to developers. A case in point was *Paradise Beach and Transportation Co. Ltd. v. Price-Robinson*.<sup>49</sup> A Mr. John A. Burrows died in 1913, devis-

---

45. CRATON, *supra* note 2, at 197-98.

46. Craton, *supra* note 33, at 92.

47. *Id.* at 102. L.D. Powles, an Englishman who served an eight-month stint as a Circuit and Stipendiary Magistrate in The Bahamas in 1886-1887, observed:

The land question at Andros Island is threatening to assume Irish proportions, but the fault lies entirely with the Government, who have been in the habit of allowing the people to apply for land, pay a deposit, and take possession, but have habitually neglected to send a surveyor down to measure out the land to them.

L.D. POWLES, *THE LAND OF THE PINK PEARL* 40 (Neil Sealey ed., Media Publ'g Ltd. 1996) (1888).

48. Quieting Titles Act, 1959, ch. 357 (Bah.).

49. *Paradise Beach & Transp. Co. v. Price-Robinson*, [1968] 1 App. Cas. 1072 (P.C. 1968) (appeal taken from Bah.).

ing a thirty-two acre tract on Hog Island (now called Paradise Island) to some of his children and grandchildren as tenants in common.<sup>50</sup> During Mr. Burrows's lifetime and after his death, two of his daughters, who owned undivided interests in the property, farmed the land and later built a house on the land. They were in exclusive possession of the property from 1913 until their deaths in 1962.<sup>51</sup> The petitioners, descendants of the devisees under Mr. Burrows's will, had a documentary claim to an undivided interest in the property even though they never exercised acts of ownership over the property. In 1963, the petitioners filed an action under the Quieting Titles Act to seek confirmation (i.e., a certificate of title) of their documentary undivided interest.<sup>52</sup> The respondents, who were heirs of the two daughters in exclusive possession, acknowledged the documentary claims of the petitioners, but alleged that the title of the petitioners was barred under the Bahamian statute of limitations. The central issue in the case was when, for purposes of the statute of limitations, the petitioners' right to bring an action to recover their interest in the property first accrued. The court ruled that the petitioners' right first accrued upon the death of Mr. Burrows in 1913, and because the twenty-year statute of limitations had long since expired by the time the petition was filed in 1963, the petitioners' claims were barred.<sup>53</sup>

---

50. *Id.* at 1078-79.

51. *Id.*

52. *Id.* at 1073. The Bahamas Supreme Court judge and author of the lower court opinion in the *Paradise Beach* case described the land at issue as "mostly coral rock with only pockets of soil and from the monetary point of view it was, prior to the last war, practically worthless." *Id.* at 1078. Less than two years before the petitioners filed their claim, Huntington Hartford II, grandson of the co-founder of The Great Atlantic & Pacific Tea Co. and heir to an enormous fortune, purchased a substantial portion of Paradise Island (then Hog Island) for (U.S.) \$9.5 million. PAUL ALBURY, *PARADISE ISLAND STORY* 90, 93 (1984). Hartford's initial attempt to purchase his Paradise Island holdings is a compelling if pathetic example of how *not* to purchase real estate in The Bahamas. In 1959, Hartford and the late Dr. Axel Wenner-Gren, Swedish industrialist, reputed Nazi sympathizer, and associate of the Duke of Windsor (previously Edward VIII, King of England), signed the back of a dinner menu, which contained handwritten terms of an agreement for Dr. Wenner-Gren to sell and Mr. Hartford to purchase the property for (U.S.) \$20 million. *Id.* at 91. Fortunately for Hartford, the "menu agreement" was sufficiently lacking in material terms to be enforceable and thanks to the efforts of his Bahamian lawyer the price and terms were re-negotiated. *Id.* at 91-93. Unfortunately, however, Hartford still could not be saved from himself, and his development on Paradise Island led to his financial ruin. LISA REBECCA GUBERNICK, *SQUANDERED FORTUNE: THE LIFE AND TIMES OF HUNTINGTON HARTFORD* 167-250 (1991).

53. *Paradise Beach*, 1 App. Cas. at 1076, 1084-85.

Controversies arising under the Quieting Titles Act have also involved claims of "family" or "generational" land holding, which appear to exist—at least culturally—in several Caribbean islands, including The Bahamas.<sup>54</sup> This form of land holding has been described as an "institution" whereby:

minuscule plots of land are regarded as the inalienable property of all descendants of the ancestor who obtained the land ... [as] a strategy maximizing freehold land rights among the peasantry in response to plantation hegemony.... For these tiny plots of land ... are imbued with an unlimited capacity for sustaining ever increasing generations of descendants forever. They 'serve children's children, till every generation dead-out.'<sup>55</sup>

Not surprisingly, an essential element of this form of land holding is voluntary non-use by those descendants who have either migrated away from the land or do not need it to sustain

---

54. See Jean Besson, *A Paradox in Caribbean Attitudes to Land*, in *LAND AND DEVELOPMENT IN THE CARIBBEAN* 13-45 (Jean Besson & Janet Momsen eds., 1987).

55. *Id.* at 14. The notion of generational property should not be confused with "commonage" land holding, which was regulated by the Commonage Act of 1896 (Bah.). Inspired by English laws enforcing enclosure of lands used in common, the Act was intended to address the cultivation and other use of lands in common on Eleuthera and other Bahamas Islands. Craton, *supra* note 33, at 97; KNOWLES, *supra* note 33, at 26-27. Powles described certain land holding in commonage on Harbour Island (located off the coast of Eleuthera) thus:

The tenure of this land is peculiar. The right of everybody residing on Harbour Island to cultivate it is the same, and the people lay out lots on any unoccupied space they find. There are no boundaries, and the individual acquires no proprietary rights in anything but the crop which is the result of his labour. This species of tenure is somewhat inconvenient, and complications not unfrequently [sic] arise requiring the intervention of the magistrate.

POWLES, *supra* note 47, at 105. Craton describes the evolution of "generational" land holding in The Bahamas as follows:

The predominant Out Island economy had become a shifting type of peasant farming. This depended very much upon the family unit, even within the Commonage areas. But the interdependence of all family members—females as much as males—the need for a shifting and seemingly casual form of farming, the prevailing vagueness about other persons' titles and boundaries, and, by and large, the general availability of unused land, reinforced the African traditions that all land was for common use according to need, that land belonged equally to the user group, and that this informal type of tenure existed within the family from generation to generation; ... [E]ven where official title resided in a single family member, he or she only held it in trust for the family at large, any member of which might be the actual user....

Craton, *supra* note 33, at 99.

themselves.<sup>56</sup> Unfortunately for those claiming interests in "generational" property, this form of real property ownership does not appear to have a foundation in English common law.<sup>57</sup> Moreover, this theory of land holding was dealt a severe blow in the *Bowe* case in 1961.<sup>58</sup> In that case, Mr. Bowe, then aged seventy-one and record title holder of a 3763-acre tract of land on Great Exuma Island, wished to sell his land to a Florida real estate developer.<sup>59</sup> A portion of this tract had been occupied for many years by a settlement consisting of homes, churches, and a school.<sup>60</sup> The settlement was populated by approximately 200 persons, most of whom were descendants of emancipated slaves.<sup>61</sup> The Bowe family lived just outside the settlement.<sup>62</sup> Bowe contended that the occupants of the settlement were, in effect, tenant farmers and laborers at will, and he petitioned the Bahamian Supreme Court, pursuant to the Quieting Titles Act,<sup>63</sup> to establish his undisputed ownership of the entire tract.<sup>64</sup> Twenty-eight adverse claimants came forward and responded to the petition, and some of these claimants alleged that the settlement was "generational property."<sup>65</sup> Regarding this notion of land holding, the judge remarked that it was "quite impossible to ascertain exactly what was meant by this expression except that in some way the property passed from parents to children."<sup>66</sup> Instead, the *Bowe* court analyzed the trial evidence in light of the English common law of adverse possession and the Bahamian

---

56. Besson, *supra* note 54, at 27-28.

57. Knowles, referring to the subject almost wistfully, states: "Perhaps it can be supported on the ground of custom. Customary tenures have developed in different localities in England, like gavelkind in Kent. Why not in The Bahamas?" KNOWLES, *supra* note 20, at 57. This suggestion is intriguing. The existence of gavelkind tenure in England was not affected by the Statute of Tenures, 1660, 12 Car. 2, ch. 24 (Eng.). SIMPSON, *supra* note 33, at 23. Indeed, it was not abolished until the enactment of the Law of Property, 1925, 15 & 16 Geo. 5, ch. 20 (Eng.). SIMPSON, *supra* note 33, at 276. Since the 1925 English Parliamentary reforms regarding real property have not been adopted in The Bahamas, one might argue that a form of local customary tenure in The Bahamas could exist.

58. *In re James Maxwell Mitchell Bowe*, No. 137 (Bah. Sup. Ct. 1961).

59. *Id.* at 1; Craton, *supra* note 33, at 103.

60. *Bowe*, No. 137, at 2. "Settlement" is the common term used to describe a village in the Out Islands. JOHN A. HOLM, *DICTIONARY OF BAHAMIAN ENGLISH* 180 (1982).

61. *Id.*

62. *Id.*

63. Quieting Titles Act, 1959, ch. 357 (Bah.).

64. Craton, *supra* note 33, at 103-04.

65. *Bowe*, No. 137, at 1-2.

66. *Id.* at 2.

statute of limitations. The court concluded from the voluminous evidence that, although the precise nature of the land holding relationship between Mr. Bowe and the occupants of the settlement was unclear, the adverse claimants did not present sufficient evidence of adverse possession; therefore, the court dismissed all of their claims.<sup>67</sup>

#### IV. AGREEMENT FOR SALE AND PURCHASE

This section will discuss issues relevant to the agreement for sale and purchase of Bahamian real property. Appendix A is a comparative glossary of certain real estate terminology. Appendix B sets forth a basic form of an agreement for the sale and purchase of vacant land in The Bahamas.<sup>68</sup> This form, like other Bahamian commercial agreement forms, is significantly shorter and less complicated than similar real estate forms commonly used by American practitioners in major urban areas in the United States. Although any agreement for the sale and purchase of Bahamian real property should include all terms necessary and appropriate to correctly set forth the understandings between the parties, American counsel should carefully consider the likely effect upon a prospective transaction and the business and professional relationships between the parties before insisting upon the form of agreement they are used to or upon certain voluminous provisions which may have become common (and often necessary) in the litigious United States, but which are uncommon in The Bahamas.<sup>69</sup>

---

67. *See id.* at 3-9.

68. This form, which favors the seller, is provided for illustrative purposes only. Prospective purchasers of Bahamian real property should, of course, consult with appropriate legal, tax and other appropriate professionals regarding their particular circumstances.

69. An example: Lengthy and often tedious representations and warranties frequently encountered in American real estate transactions are not the norm in The Bahamas, where representations or warranties in agreements for sale and purchase are typically limited to matters of title. This is not to suggest that American counsel should necessarily refrain from seeking *any* representations or warranties in Bahamian real estate transactions, but rather that such counsel should be aware that "American-style" representations and warranties might well be met with suspicion, disdain, or complete rejection by their Bahamian counterparts, and therefore, such counsel should be judicious and parsimonious in drafting and proposing such provisions. Nor should American counsel assume that simpler real estate forms indicate any lack of sophistication on the part of the Bahamian bar or business community. Simplicity should never be mistaken for lack of sophistication.



### A. *The Parties*

In the Bahamian agreement for sale and purchase, the seller is usually referred to as the "vendor" and the buyer is normally referred to as the "purchaser." The parties may be natural persons or legal entities. In dealing with natural persons, it is important to remember that dower, along with its less troublesome but equally archaic cousin, curtesy, is alive and well in The Bahamas.<sup>70</sup> Legal entities recognized under Bahamian law include: corporations, which are referred to as "companies" under Bahamian law; general and limited partnerships; and trusts.<sup>71</sup> The entity most commonly encountered is the company.

In 1992, the Companies Act replaced its nineteenth century statutory predecessor.<sup>72</sup> The advantages of the new Act include: (i) a distinction between public and private companies (there was none under the old statute); (ii) a minimum of only two subscribers is necessary regarding a Bahamian company's memorandum of association (previously, five were required);<sup>73</sup> (iii) it is no

---

70. A wife is entitled on the death of her husband to a life estate in one-third of her husband's lands, provided he was solely seised of an estate of inheritance (i.e., fee simple or fee tail in possession) and issue of the marriage capable of inheriting had been born. KNOWLES, *supra* note 33, at 125-27. She may renounce her dower during her husband's lifetime or release it after his death. See Dower Act, ch. 135 (1873) (Bah.). A wife's dower interest may be avoided by conveyance to an entity controlled by the husband or by a conveyance to uses (i.e., a trustee). KNOWLES, *supra* note 33, at 161; see generally JOHN J. PARK, A TREATISE ON THE LAW OF DOWER (Professional Books Ltd., 1983) (1819) (which is still the leading authority on dower). Regarding curtesy, if a wife dies intestate her husband is entitled to a life estate in all of her lands, provided she was solely seised of an estate of inheritance (i.e., fee simple or fee tail in possession) and issue of the marriage capable of inheriting from the wife had been born alive. KNOWLES, *supra* note 33, at 118-19. However, since 1884, a married woman may freely dispose of her own lands during her lifetime or by will, thereby defeating her husband's entitlement to curtesy. See Married Women's Property Act, ch. 115 (1884) (Bah.).

71. Another entity recently authorized is the International Business Company (IBC). International Business Companies Act, 1989, §§ 3-4 (Bah.), amended by International Business Companies (Amendment) Act, 1992 (Bah.) and International Business Companies (Amendment) Act, 1994 (Bah.). Although there are significant tax, jurisdictional and other advantages to an IBC, it may not transact business with Bahamians or own any freehold or leasehold interest in Bahamian real property (except for an interest as a tenant under an office lease satisfying the criteria set forth in the Act). *Id.* § 5. Its use is more suited to operating as a holding company for banking, insurance or other financial operations.

72. The prior Companies Act was superseded by the Companies Act, 1992 (Bah.), amended by Companies (Amendment) Act, 1993 and Companies (Amendment) Act, 1994.

73. *Id.* §§ 2, 3(1). The memorandum of association is also commonly referred to as the "charter." After incorporation, however, a company may operate with only one

longer necessary to state in the memorandum of association the company's permitted purposes (thus effectively abrogating the *ultra vires* doctrine);<sup>74</sup> and (iv) recognition of more modern operational procedures (e.g., directors may conduct meetings by telephone).<sup>75</sup> The Act also permits a company to effectively limit the liability of its shareholders regarding creditors of the company to the assets of the company.<sup>76</sup>

Any shareholder, officer, or director of a company formed under the Act may be foreign (i.e., non-Bahamian), but the company must have a registered office in The Bahamas.<sup>77</sup> There are, however, certain restrictions regarding foreign investment.<sup>78</sup> In lieu of forming a Bahamian company, American corporations or other entities may register as "foreign companies" under the Act.<sup>79</sup> Indeed, an American entity *must* register under the Act if it "carries on an undertaking" in The Bahamas.<sup>80</sup> Unfortunately, the definition of "undertaking" is vague and somewhat circular.<sup>81</sup> For instance, under the Act it is not clear whether the mere execution, as "purchaser," of an agreement for sale and purchase of Bahamian real property constitutes an "undertaking" or whether

---

shareholder, although at least two directors are required. *Id.* § 85.

74. The Act provides: "Subject to this Act, a company incorporated under this Act has the capacity and all the rights, powers and privileges of an individual of full capacity." *Id.* § 24(1). In examining title to Bahamian real property, to the extent one encounters Bahamian companies formed under the prior Companies Act in documents in the chain of title, it may still be necessary to examine the charters of such companies in relation to the relevant conveyances.

75. *Id.* § 101.

76. *Id.* §§ 5, 7, and 8.

77. *Id.* § 17(1). Often the registered office is the office of the company's Bahamian legal counsel. In addition, in lieu of individual shareholders, the practice of designating other Bahamian companies (also usually controlled and administered by Bahamian legal counsel) as nominee shareholders for a particular Bahamian company is common.

78. See text and accompanying notes *infra* Part IV.F.

79. *Id.* §§ 179-91. The Act states: "A foreign company has the same capacity as a company incorporated under this Act and the provisions of this Act, except those relating to incorporation, shall apply, *mutatis mutandis*, to foreign companies." *Id.* § 185 (boldface in original). All things being equal (e.g., U.S. federal and state tax treatment), in view of the limited liability available under the Companies Act and the vastly different state of tort liability in The Bahamas, American counsel should seriously consider establishing a Bahamian company for doing business in The Bahamas.

80. *Id.* § 181(1).

81. An entity is deemed to be carrying on an "undertaking" in The Bahamas if (i) "it maintains a warehouse or place of business in The Bahamas," (ii) it is licensed, registered, or required to be so under any Bahamian law permitting it to do business or to issue and sell its own shares or debentures, or (iii) "in any other manner, it carries on any undertaking in The Bahamas." *Id.* § 180. "Undertaking" is further defined as "any business or undertaking carried on by a foreign company." *Id.* § 179.

the ownership of vacant land by itself meets the definition.<sup>82</sup> Given that the Act's requirements for registering as a foreign company are relatively easy,<sup>83</sup> the safer practice is to either properly incorporate a Bahamian company or to register an existing entity as a foreign company under the Act prior to entering into an agreement for the sale and purchase of Bahamian real property.

### *B. The Property*

The highest or most complete form of ownership of real property in The Bahamas is fee simple. The bundle of rights which one owns and holds with respect to real property in The Bahamas is typically described in legal documents as "lands, tenements, and hereditaments," or simply "hereditaments."<sup>84</sup> Land and buildings are sometimes further described as "corporeal hereditaments," and intangible rights, such as an easement over the land of another, are described as "incorporeal hereditaments."<sup>85</sup>

As in the United States, the property to be purchased should be clearly and unambiguously described either by metes and bounds determined from a recent, accurate survey or plan or by reference to a plat or survey duly recorded with the Registrar General.<sup>86</sup> It is a good idea to include in the agreement for sale and purchase both a verbal description and a survey or plan if available.<sup>87</sup> If both are included, however, the parties should

---

82. In this respect the definition of "undertaking" is similar to the "qualification to do business" issue under the laws of various American states that has plagued many American lawyers. See C T CORPORATION SYSTEM, WHAT CONSTITUTES DOING BUSINESS (1995).

83. A foreign company wishing to register under the Act must file with the Registrar of Companies a certified copy of its articles of incorporation and by-laws and complete an approved form, which requires certain basic information regarding the foreign company. Companies Act § 182. An annual filing fee (currently (Bah.) \$1,000) is also required. *Id.* § 308, sched. 3.

84. KNOWLES, *supra* note 33, at 12, 17. Hereditaments refer generally to things that may descend to an heir. *Id.* While this term is not unknown in American jurisprudence, it is seldom used in a similar context in the United States.

85. *Id.* at 17.

86. See Registration of Records Act, ch. 175 (1928) (Bah.). Absent express intent to the contrary, general words of conveyance regarding land are deemed to include all buildings, improvements and appurtenant rights. Conveyancing and Law of Property Act, ch. 123, § 6 (1909) (Bah.).

87. Note, however, that the fact that the actual boundaries of land could not be as-

indicate which would prevail in the event of an inconsistency. For instance, if the agreement states that plan is included "for the purposes of facilitating identification only," or words of similar import, then the verbal description will prevail.<sup>88</sup> Conversely, if the property is said to be "more particularly described in the plan," then the plan will prevail.<sup>89</sup>

Surveyors and the practice of surveying in The Bahamas are regulated by statute.<sup>90</sup> The minimum requirements for land surveys in The Bahamas are set forth in the regulations promulgated pursuant to this statute.<sup>91</sup> These regulations are less detailed than some of their American counterparts.<sup>92</sup> The usual practice in The Bahamas is that purchasers are responsible for obtaining their own new survey. An American purchaser who wishes to obtain a survey in accordance with more familiar practices or standards—such as those promulgated by the American Land Title Association and American Congress on Surveying & Mapping<sup>93</sup>—should provide these standards to his or her Bahamian surveyor along with a certification to be signed by the surveyor indicating compliance with these practices or standards.

### *C. Deposit*

Although not required by law, it is customary in The Bahamas for purchasers of real property to deliver a deposit, often referred to in the United States as an "earnest money deposit," to the seller's attorney, who holds the deposit as "stakeholder" in a capacity similar to the role commonly known as "escrow agent" in the United States.<sup>94</sup> In many U.S. jurisdictions, it is common

---

certained under the terms of the agreement for sale and purchase will not invalidate an otherwise valid agreement so long as it is possible to ascertain the boundaries at or prior to conveyance (and the purchaser may insist upon the seller ascertaining the proper description). *Cox v. Dean*, 2 L.R.B. 143 (Bah. Sup. Ct. 1965).

88. ROBERT MEGARRY & H.W.R. WADE, *THE LAW OF REAL PROPERTY* 167 (5th ed. 1984).

89. *Id.*

90. See Land Surveyors Act, ch. 232 (1975) (Bah.).

91. Land Surveyors Regulations (1975) (Bah.).

92. See, e.g., FLA. ADMIN. CODE ANN. r. 61G17-1.001 to -1.018 (1997).

93. See AMERICAN LAND TITLE ASS'N & AMERICAN CONGRESS ON SURVEYING & MAPPING, *MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS* (1992).

94. The term "escrow agent," and much of the entire process for closing real estate transactions differ significantly by custom between the eastern United States and the

to enter into lengthy tripartite agreements among the seller, purchaser, and escrow agent for the purpose of setting forth the respective duties and obligations of the parties, especially the escrow agent.<sup>95</sup> Such agreements are not common in The Bahamas. In fact, as stakeholder, seller's counsel in The Bahamas typically accepts and holds deposits without any direct agreement with the purchaser. This does not mean, however, that the stakeholder is not duty-bound under English and Bahamian common law to properly hold and account for the deposit. Nevertheless, other protections are possible for American counsel who take scant comfort at this prospect. One may designate both the purchaser's counsel and the seller's counsel as "joint stakeholders" under a joint account by which neither stakeholder may withdraw the deposit without the consent of the other. In addition, the purchaser may, in lieu of an American style, separate tripartite escrow agreement, add an appropriate paragraph to the agreement for sale and purchase regarding the holding, administration and disposition of the deposit and request that the stakeholder or joint stakeholders, as the case may be, also execute the agreement in their capacity as stakeholders.

The typical deposit amount is ten percent of the contract purchase price, although this is completely subject to negotiation. The deposit is generally paid to the stakeholder at the execution of the agreement for sale and purchase, but this too may be the subject of other negotiation. The so-called "free look"—an agreed upon period, lasting usually from 30 to 120 days, during which a purchaser may perform studies and due diligence regarding the subject property with no risk of losing the purchaser's deposit—is not an established practice in The Bahamas. However, especially where American purchasers are involved, it

---

western United States. 11 THOMPSON ON REAL PROPERTY § 94.04(a)-(b), at 336 (David A. Thomas ed., 1994) (contrasting "New York style closing" with "California closing"); compare 2 MILTON R. FRIEDMAN, CONTRACTS AND CONVEYANCES OF REAL PROPERTY 995-1026 (5th ed. 1991) (describing real estate closing practices common in the New York area) with 1 HARVEY D. MILLER & MARVIN B. STARR, CURRENT LAW OF CALIFORNIA REAL ESTATE 652-764 (2d ed. 1989) (describing real estate closing practices common in California). Even if a closing is consummated in the eastern United States, an escrow agent (e.g., attorney, title agency, etc.) is still often used to hold and administer the purchaser's earnest money deposit.

95. Indeed, much of the modern American escrow agreement is focused on exculpation and indemnities (from the seller and purchaser) in favor of the escrow agent such that, absent theft or misconduct in the grossest degree, the escrow agent is absolved of all ills.

is becoming more common.<sup>96</sup> The seller will usually seek to have the option of retaining the deposit as liquidated damages without prejudice to alternative remedies such as other damages or specific performance.<sup>97</sup> This scenario should be wholly unsatisfactory to the purchaser, who might insist in the agreement that the seller shall retain the deposit as the seller's sole remedy and in lieu of specific performance.

#### *D. Title and Conveyance*

### 1. English System of Title Assurance

There is in the traditional English system of title assurance and conveyancing a spectre of uncertainty that is quite unsettling to the American lawyer. Under English law, except where title registration and related reforms have been adopted, title to real property may be based on documentary or possessory title. With respect to the latter, the stigma that has attached to adverse possession in American jurisprudence<sup>98</sup> does not exist. English titles are "relative titles,"<sup>99</sup> which leave the gnawing possibility that lurking just out of sight of the present "owner" is someone with a competing and maybe even better documentary or possessory claim. Conversely, and notwithstanding decades of pioneer and frontier life and culture, there is in the American

---

96. Of course, "free look" provisions are limited only by the imagination of counsel. A common variant of the "free look" is a provision whereby the purchaser must periodically (e.g., every 60-90 days) make additional deposits with the stakeholder. Since caveat emptor is still the rule in The Bahamas, the purchaser should ensure that the property will be properly inspected.

97. See, e.g., *infra* Appendix B, para. 11.

98. Adverse possession is "not a favored" mode of acquiring title to property in the United States. 3 AM. JUR. 2D *Adverse Possession* § 1 (1986).

99. In *Ocean Estates Ltd. v. Pinder*, [1969] 2 App. Cas. 19 (P.C. 1969) (appeal taken from Bah.), the Privy Council noted:

At common law as applied in the Bahamas, which have not adopted the English Land Registration Act, 1925, there is no such concept as an "absolute" title. Where questions of title to land arise in litigation the court is concerned only with the relative strengths of the titles proved by the rival claimants. If party A can prove a better title than party B he is entitled to succeed notwithstanding that C may have a better title than A, if C is neither a party to the action nor a person by whose authority B is in possession or occupation of the land.

*Id.* at 25.

system of title assurance and conveyancing an absolutism that evaded the English system until perhaps the Parliamentary reforms of 1925.<sup>100</sup> The reasons for this "absolutism" are many, but chief among them is that with a few insignificant exceptions feudal tenures, along with their attendant Byzantine conveyancing practices and arcane medievalisms, never took hold in America after the colonial charters. Especially after the American Revolution, allodial titles were the norm and in several of the original colonies such titles were mandated by law.<sup>101</sup> Another primary reason for this certainty lies in "the distinctive features of the American system of recording deeds,"<sup>102</sup> a system which began in America more than a generation before the enactment of the Statute of Frauds in England in 1677.<sup>103</sup>

The English statutory land law reforms of 1925 have not been adopted in The Bahamas. As in England, title to Bahamian land may be based upon documentary or possessory claims. Unfortunately, compounding the uncertainty associated with the English system of title assurance and conveyancing is the long history of confusion over titles in The Bahamas previously discussed.

## 2. Establishing Good and Marketable Title

Except as otherwise stipulated by the parties, the purchaser under an agreement of sale and purchase of Bahamian real property is entitled to "good and marketable" fee simple title. Although this entitlement is considered to be an implied right of the purchaser,<sup>104</sup> the typical Bahamian agreement of sale and purchase will also expressly state that the purchaser is so entitled.<sup>105</sup> In addition, the usual form of agreement for sale and purchase states that the seller will convey the property to the purchaser as "Beneficial Owner," which is an abbreviated refer-

---

100. Law of Property, 1925, 15 & 16 Geo. 5, ch. 20 (Eng.).

101. MOYNIHAN, *supra* note 35, at 26.

102. R.G. Patton, *Evolution of Legislation on Proof of Title to Land*, 30 WASH. L. REV. 224, 226 (1955) (quoting Beale, *Origin of the System of Recording Deeds*, 9 GREEN BAY L. REV. 335, 339 (1907)).

103. Statute of Frauds, 29 Car. 2, ch. 3 (1677) (Eng.).

104. 42 LORD HAILSHAM OF ST. MARYLEBONE, *HALSBURY'S LAWS OF ENGLAND* 117 (4th ed. 1983). The rule is the same in the United States. FRIEDMAN, *supra* note 94, at 359.

105. See, e.g., *infra* Appendix B, para. 6.

ence to the covenants of title set forth at some length in the Conveyancing and Law of Property Act.<sup>106</sup>

The purchaser is entitled to call for proof of the seller's title, and the parties will usually establish by contract the extent of proof required by the purchaser. Under Bahamian conveyancing practice, as in England, when one proves title, one is said "to deduce title." Traditionally, the seller deduces title by producing for the purchaser's review an "abstract of title."<sup>107</sup> This abstract is a "summary of documents by which any dispositions of the property have been made during the period for which title has to be shown, and of all of the facts, such as births, marriages, deaths or other matters affecting the devolution of title during the same period."<sup>108</sup> The production of the abstract will be at the seller's expense, unless the parties agree otherwise.<sup>109</sup> The abstract should include every material part of the relevant documents, including verbatim descriptions of the real property.<sup>110</sup> Bahamian sellers of real property follow the traditional English practice of delivering the originals of prior deeds and other documents of title to the purchaser upon consummation of the sale and purchase. Prior to consummation, the seller is further obliged to produce for the purchaser's inspection the originals of all abstracted documents in his or her possession.<sup>111</sup> The seller

---

106. Conveyancing and Law of Property Act, ch. 123, § 7 (1909) (Bah.). The covenants include (i) right to convey, (ii) quiet enjoyment, (iii) freedom from encumbrance, and (iv) further assurance. *Id.* Statutory devices for a "short hand" reference to covenants of title also exist in some jurisdictions in the United States. See, e.g., VA. CODE ANN. § 55-70 (Michie 1950) (which provides that the inclusion in a deed of the phrase "with English covenants of title," or words of similar meaning, incorporates by reference the Virginia statutory covenants of title). DOUGLASS W. DEWING, A VIRGINIA TITLE EXAMINER'S MANUAL § 16-11 (2d ed. 1992).

107. KNOWLES, *supra* note 33, at 228.

108. HAILSHAM, *supra* note 104, at 120. While The Bahamas follows the English rule that, in the absence of express agreement, the seller has an implied obligation to furnish the purchaser with an appropriate abstract of title, in the United States the majority rule is just the opposite. *Baker v. Howison*, 104 So. 239 (Ala. 1925); RUFFORD G. PATTON & CARROLL G. PATTON, 1 PATTON ON TITLES § 42 (2d ed. 1957).

109. KNOWLES, *supra* note 33, at 228. *But see* sources cited *infra* note 112.

110. HAILSHAM, *supra* note 104, at 124.

111. See *id.* at 126; KNOWLES, *supra* note 33, at 228, 232. If a document comes from proper custody (i.e., some place where it might reasonably be expected to be found) and there is no reason to doubt its authenticity, it is presumed that it was executed or signed as it appears on its face. HAILSHAM, *supra* note 104, at 126. In addition, recitals, statements and descriptions of facts or matters contained in deeds or other instruments of title that are at least 20 years old at the date of the agreement for sale and purchase shall be assumed to be correct as written unless proven to the contrary. Conveyancing and Law of Property Act § 3(3).



must satisfactorily account for any lost or missing originals of abstracted documents and produce adequate secondary evidence of their contents and due execution.<sup>112</sup> Another method of deducing title, which is less detailed than the abstract of title and is becoming more common in The Bahamas, is an "epitome of title."<sup>113</sup>

Under Bahamian practice, title must be "deduced" for a period of at least thirty years preceding the contemplated date of conveyance.<sup>114</sup> The period is "at least" thirty years because the abstract or other proof of title must begin with a document known as a "good root of title," and it is quite possible that one must go back more than thirty years to establish a good root of title.<sup>115</sup> A good root of title is a document in the title chain, which purports to "deal with the entire legal and equitable estate in the property sold, not depending for its validity upon any previous instrument, and containing nothing to throw any sus-

---

112. HAILSHAM, *supra* note 104, at 126. By statute, absent contrary agreement of the parties, the purchaser must bear the expenses of the production (including "journeys incidental to such production") of deeds or other documents of title not in the seller's possession. Conveyancing and Law of Property Act § 3(8). A well represented purchaser will seek to avoid this statutory result in the agreement for sale and purchase.

113. An epitome of title, for example, does not usually include information regarding births, deaths, etc. The sample form of agreement of sale and purchase set forth at Appendix B states in Paragraph 7 that the seller is not required to deliver an abstract of title to the seller unless requested to do so by the purchaser within 14 days after the delivery of all documents affecting title in the seller's possession. As a practical matter, the purchaser will know within this 14-day period whether he or she has a preliminary comfort with the status of the seller's title, and if that level of comfort is high, the purchaser may elect to forego a formal abstract of title and rely instead on an epitome of title.

114. The parties may agree to a longer or shorter period by contract. However, if a purchaser agrees to a period less than the 30-year period provided under the Conveyancing and Law of Property Act, the purchaser will be charged with constructive notice of all documents and matters that would have been uncovered had the purchaser investigated title for the full statutory period. MEGARRY & WADE, *supra* note 88, at 151. If the parties fail to provide for this by contract, then under Bahamian law the maximum time period for which the purchaser may request proof of the seller's title is 30 years or for a period extending no further back than a grant or lease by the Crown or certificate of title granted in accordance with the Quieting Titles Act, whichever is the shortest period. Conveyancing and Law of Property Act § 3(4). Even under this statute, however, if the most recent good root of title was, for instance, 45 years prior to the contemplated sale, the seller would nevertheless be required to deduce title from the 45-year old root of title. Under prior English convention and practice, the time period for proof of title was at least 60 years, but this was reduced to 40 years under the Vendor and Purchaser Act, 1874, 37 & 38 Vict., ch. 78 (Eng.). In 1925, the time period for proof of title was further reduced to 30 years. Law of Property, 1925, 15 & 16 Geo. 5, § 44(1) (Eng.). The period is now 15 years in England. Law of Property Act, 1969, ch. 59, § 23 (Eng.).

115. *In re Cox and Neve's Contract*, 2 Ch. D. 109, 118 (1891) (Eng.); HAILSHAM, *supra* note 104, at 118.

picion on the title of the disposing parties.”<sup>116</sup> The best root of title is a conveyance in fee simple or a freehold mortgage under traditional English common law,<sup>117</sup> but under Bahamian law and practice one should add to these a Crown grant or a certificate of title granted in accordance with the Quieting Titles Act.<sup>118</sup> Other documents may also constitute a good root of title.<sup>119</sup> Once the root of title is established, the seller must prove all subsequent steps in the title that lead down to the seller.<sup>120</sup>

Absent agreement to the contrary (which would be the very rare case), “the purchaser may not make any inquiry or objection about [title] matters anterior to the root of title.”<sup>121</sup> Indeed, it may be dangerous to do so because, among other things, the purchaser may be affected by actual notice of prior equitable interests or other adverse title matters and lose his or her superlative status under the law as a “purchaser without notice.”<sup>122</sup> Because it is the convention or requirement in some American jurisdictions to investigate title back to the sovereign (e.g., British Crown grant, U.S. patent, etc.), the aforesaid practices may seem arbitrary or odd to practitioners from these jurisdictions. One might question, for instance, how one could ignore the possibility of a title defect arising prior to the root of title. The answer lies in the statute of limitations. Under the common and statutory law of England, the period of time for searching title has coincided with the longest period or periods set forth in the statute of limitations with respect to actions to recover real property.<sup>123</sup>

---

116. HAILSHAM, *supra* note 104, at 120.

117. *Id.*

118. Conveyancing and Law of Property Act § 3(4); KNOWLES, *supra* note 33, at 230.

119. *E.g.*, a specific (but not general) devise under a will, deed of asset or deed of gift.

120. MEGARRY & WADE, *supra* note 88, at 609.

121. *Id.* at 609-10.

122. *See id.* at 151. “It is a fundamental rule that a purchaser of a legal estate for value without notice is an ‘absolute, unqualified, unanswerable defence’ against the claims of any prior equitable owner or incumbrancer.” *Id.* at 142 (citation omitted). Under the Conveyancing and Law of Property Act, a purchaser shall not be prejudicially affected by notice of any instrument or fact unless (i) the purchaser or his or her attorney acquires actual notice of such instrument or fact, or (ii) such instrument or fact would have come to the purchaser’s or his or her attorney’s notice by such inquiries or inspections “as ought reasonably to have been made” by the purchaser or his or her attorney. Conveyancing and Law of Property Act § 57. The import of the second of these two principles is that since the law contemplates that title must be deduced for a period of only 30 years (subject to the chronological beginning point of the root of title), the purchaser will not be charged with constructive notice of instruments or facts prior to the root of title.

123. LEWIS M. SIMES, THE IMPROVEMENT OF CONVEYANCING BY LEGISLATION 3 n.1

Similarly, under the Real Property Limitation Act, which was in effect in The Bahamas until it was superseded in 1995, the maximum time period for bringing an action to recover real property was thirty years—the same time period for investigation of title set forth in the Conveyancing and Law of Property Act.<sup>124</sup> On the other hand, American lawyers who practice in jurisdictions that have enacted marketable title legislation<sup>125</sup> will

---

(1960).

124. Real Property Limitation Act, ch. 72, § 5 (1874) (Bah.); Conveyancing and Law of Property § 3(4). The Crown was not bound by the Real Property Limitation Act; instead the Crown was bound by the 60-year limitations period set forth in the Real Property Limitation (Crown) Act, ch. 69 (1873) (Bah.). See also Real Property Limitation (No. 1) Act, ch. 213 (1833) (Bah.) (which sets forth, inter alia, the principles by which the right to recover land first accrues). The Quieting Titles Act (1959) (Bah.), which states that it shall not be necessary for one to deduce title for a period longer than is provided under the Conveyancing and Law of Property Act (i.e., 30 years), was clearly drafted with the 30-year limitations period in mind. A useful illustration of the interplay among the Real Property Limitation Act, the Conveyancing and Law of Property Act, and the Quieting Titles Act is *Re Knowles*, 1 L.R.B. 31 (Bah. Sup. Ct. 1966). The *Knowles* case arose under the Quieting Titles Act, and both the petitioner and respondent in the case based their claims of ownership on documentary and possessory title. The petitioner's root of title was based upon an 1870 deed of conveyance from one Mr. and Mrs. Fox to Joseph A. Knowles and Richard L. Knowles. Joseph A. Knowles died testate, and the property devolved upon Richard L. Knowles, who thereby acquired full ownership of the subject property. In 1909, Richard L. Knowles died intestate, and title to the property descended to his eldest son, the petitioner. The respondent claimed title through a will probated in 1869, which contained a very vague description of certain real property which the respondent alleged was the same as the subject property (it is not necessary for present purposes to discuss the specifics of the respondent's claim other than to note that the court was not impressed with the respondent's documentary evidence). The petitioner's problem was that his abstract of title showed a Crown Grant to the subject property from 1787, and there were apparently no intervening conveyances or other documents between the time of this Crown Grant and the 1870 deed of conveyance. Thus, there was a "gap" in the petitioner's chain of title for nearly a century. The court had no difficulty in dismissing the significance of this documentary gap. The court pointed out that the Quieting Titles Act requires only that title be deduced for a period of 30 years and held as follows:

The petitioner has gone back to 1870 and it seems to me that the only relevance of the Crown grant in the abstract of title is to prove that the Crown had divested itself of ownership of the land in question. The conveyance of 1870 is a good root of title and the petitioner did not require to go further back. Apart from the Quieting of Titles Act, this matter is discussed in Megarry and Wade, *The Law of Real Property* (3rd edn., 1962) pp. 586-588.

*Id.* at 32.

125. Marketable title legislation is intended to "extinguish ancient defects and stale claims against the title to real property." THE FLORIDA BAR CONTINUING LEGAL EDUCATION, REAL PROPERTY TITLE EXAMINATION AND INSURANCE IN FLORIDA § 2.2 (2d ed. 1988). This legislation typically works as follows: If a person has a record chain of title for a stated period of time (usually 30-40 years), and no one else has filed a notice of claim to the property during the same period, then all conflicting claims based upon any title transaction prior to the stated period are extinguished. SIMES, *supra* note 123, at 4. Approximately 19 American states have enacted marketable title legislation. THE

note the disadvantages of relying upon the statute of limitations to extinguish title claims and defects, as compared to marketable title legislation.<sup>126</sup> Yet, it seems very unlikely that marketable title legislation—an invention of American jurisprudence—will be adopted in The Bahamas. In 1995, however, the Bahamian Parliament enacted a comprehensive statute of limitations, which provides that an action to recover land must be brought within twelve years of the date on which it first accrues.<sup>127</sup>

### 3. Requisitions on Title

After the purchaser's attorney receives the abstract and the documents of title, he or she will examine them and prepare a list of questions or objections regarding title, which are called "requisitions on title." In connection with this examination, the purchaser's attorney should conduct appropriate searches for judgments, outstanding orders, or other matters affecting title to the property at the Registry of the Bahamian Supreme Court. The purchaser's requisitions must be prepared and submitted to the seller within the period agreed upon by the parties.<sup>128</sup> As a practical matter, the parties may go back and forth on the purchaser's requisitions. However, often the agreement for purchase and sale will provide that, if the purchaser insists upon a requisition which the seller is unable or unwilling to satisfy,

---

FLORIDA BAR CONTINUING LEGAL EDUCATION, *supra*, at 125, § 2.6.

126. According to Simes:

Statutes limiting recovery of real property commonly have three weaknesses as devices to cure defective titles: (1) the time when the period ends is uncertain due to provisions for extension by reason of disabilities and other facts; (2) adverse possession for the statutory period is outside the record and is often difficult to prove; (3) the statutes do not bar future interests.

SIMES, *supra* note 123, at 41-42.

127. Limitation Act, 1995, § 16(3) (Bah.). The Limitation Act is modeled upon the Limitation Act, 1939, 2 & 3 Geo. 6, ch. 21, § 4(3) (Eng.) and the Limitation Act 1980, ch. 58 (Eng.). *Bahamas Commonwealth Bank Ltd. v. Lewis*, No. 437 (Bah. Sup. Ct. 1996) ("[a] review of the Acts clearly shows that the Bahamian statute [i.e., of limitations] was patterned after the English statutes"); cf. 28 LORD HAILSHAM OF ST. MARYLEBONE, *HALSBURY'S LAWS OF ENGLAND* 319-20 (4th ed. 1979). Another "cleansing agent" of Bahamian law regarding prior conveyances that might be vague or less than perfect is the statutory rule that, absent express agreement to the contrary, every conveyance shall be deemed to pass all estate, right, title, and interest of the grantor to the grantee. *Conveyancing and Law of Property Act* § 56. For the purposes of the Limitation Act, an "action to recover land" includes both an action for trespass (see *Ocean Estates*, 2 App. Cas. at 96) and an action under the Quieting Titles Act (see *Mather v. Grand Bahama Port Authority Limited*, 1 L.R.B. 103 (Bah. 1966)).

128. See, e.g., *infra* Appendix B, para. 9.

then the seller may rescind the agreement and refund the purchaser's deposit.<sup>129</sup> If the agreement includes such a provision, the purchaser should at least insist on having the final say in the matter by having the option to withdraw the subject requisition, thereby canceling the seller's rescission.<sup>130</sup> Still, even with the inclusion of this proviso, the well represented American purchaser, who might incur substantial time and expense prior to the ultimate resolution of requisitions on title, may hold a dim view of this prospect. Depending on the relative bargaining power of the parties, the purchaser's remedies in the United States for defects in title might include (i) rescission, (ii) the right to discharge any encumbrances or otherwise cure title defects and reduce the purchase price accordingly, (iii) the right to "carve out" the affected property from the transaction, with a pro-rata or other equitable adjustment to the purchase price, if the defect affects only a portion of the property that the purchaser decides he or she can live without, (iv) the right to extend the closing date while the purchaser pursues any of the foregoing, and (v) the right to sue the seller for breach of the seller's covenant and warranty that the seller owned good and marketable fee simple title to the property at the time of the agreement. Except for the first of these remedies, none is typical in The Bahamas, and the fifth of these remedies—the right to sue and collect damages—is likely to be regarded as particularly "out of school." The reason for this is the English rule<sup>131</sup> that, absent active fraud or deceit on the part of the seller, a purchaser may not recover general damages against a seller if it turns out that the seller's title is defective. Thus, the purchaser's damages are limited to refund of the deposit and actual expenses such as title examination.<sup>132</sup>

---

129. See, e.g., *infra* Appendix B, para. 10.

130. See, e.g., *infra* Appendix B, para. 10.

131. In the United States, the jurisdictions are split on the issue of whether a purchaser may recover loss of bargain or other damages, in addition to the return of earnest money and title search fees, against a seller with defective title. In some jurisdictions, the courts will not allow a purchaser to recover more than the return of earnest money and title search fees if the seller acted in good faith. 77 AM. JUR. 2D *Vendor and Purchaser* § 526 (2d ed. 1975). In other jurisdictions, the seller's good faith is immaterial, and if the seller's title turns out to be defective, the purchaser may recover damages including loss of bargain. *Id.*

132. MEGARRY & WADE, *supra* note 88, at 617. The rationale behind the rule is said to be the "peculiar difficulty of making a title to land in England." *Id.* *Accord* Maycock v.

Notwithstanding the author's prior admonition about seeking to force American-type terms and provisions in Bahamian real estate transactions, the matter of title is of critical importance to the purchaser; therefore, it is advisable for the purchaser to negotiate as many of these remedies as is feasible. If this proves unsuccessful, then, at minimum, the purchaser should ensure that the agreement for sale and purchase provides sufficient time for matters such as "free look" or due diligence, deposits of additional earnest money, delivery of abstract of title and title documents, delivery of requisitions on title, and resolution of conflicts regarding title and closing, so that the purchaser will be satisfied that the seller's title is acceptable to the pur-

---

Hannah, 2 L.R.B. 117 (Bah. Sup. Ct. 1964). The rule is applied widely, and it applies, for instance, even if the seller knew he or she had defective title, but can establish good faith efforts to cure it. See MEGARRY & WADE, *supra* note 88, at 617. The rule can also lead to harsh results. In the case of *Burnside v. Mutual Development Co. Ltd.*, 2 L.R.B. 170 (Bah. Sup. Ct. 1966), following completion of her purchase of a lot, the purchaser and plaintiff, one Mrs. Burnside, sought to recover from the defendant-seller, Mutual Development, the purchase price she had paid to Mutual Development after it became apparent that another party claimed to own the lot through a different chain of title (a situation which the court described as "two separate and parallel documentary titles to the same land"). *Id.* at 170-71. The "competing" documentary claim discovered by Mrs. Burnside after completion was based upon a conveyance executed in 1950, but not recorded until after the purchase of the lot by her. *Id.* The holder of the other claim was not a party to the action. *Id.* Mrs. Burnside's theory of recovery was breach of the covenants of the seller in its deed of conveyance as beneficial owner under the Conveyancing and Law of Property Act. *Id.* The court held that these covenants were "not absolute and only extended] to the acts or omissions of the defendants as vendors and of persons through whom they derive title otherwise than by purchase for value." *Id.* at 171. Since the seller was unaware of the competing documentary claim, the court held that the seller had not impaired the title by the seller's act or omission. *Id.* The court further held that since the title that the seller had was in fact conveyed to Mrs. Burnside "the rule caveat emptor applies." *Id.* In support of its holding, the court cited with approval *Allen v. Richardson*, 13 Ch. D. 524, 541 (1879), an English case, which stated in part that "a purchaser investigating a title must know that when he accepts the title, takes the conveyance, pays the purchase money, and is put into possession there is an end to all as between him and the vendor on that purchase." *Burnside*, 2 L.R.B. at 172. The court concluded by noting that Mrs. Burnside should test her title against the competing documentary title holder and entered judgment for the seller. *Id.* The *Burnside* decision is entirely in accord with English common law. See MEGARRY & WADE, *supra* note 88, at 164 ("the vendor [is] liable only in respect of the acts or omissions of himself and persons through whom he claims otherwise than by purchase for money or money's worth"). Thus, the "power to convey" covenant in The Bahamas is similar to the covenants of the grantor in a "limited" or "special" warranty deed in the United States. What could or should Mrs. Burnside have done differently? Although not mentioned by the court, she or her counsel should have insisted that title be deduced for the full statutory period (i.e., 30 years). In her case, this would have meant title would have been proven at least as far back as 1934, which was 16 years prior to the "competing" deed of conveyance executed in 1950. Had she done this, it is very likely things would have turned out differently for her.

chaser before the purchaser expends substantial time and money.

Another option available to the parties in the event that a dispute arises regarding requisitions on title is the vendor/purchaser summons. Recognizing that the parties usually intend to consummate their transaction as soon as reasonably possible, the Conveyancing and Law of Property Act provides for a summary procedure whereby either the seller or purchaser may apply to the Bahamas Supreme Court for judicial resolution of a dispute between the parties regarding requisitions on title or other issues arising under the agreement for sale and purchase.<sup>133</sup> If the purchaser wishes to preserve this option in the agreement, then the usual provision regarding the seller's right to rescind upon the purchaser's obstinacy over some requisition on title will need to be modified.<sup>134</sup>

#### 4. Attorney's Opinion of Title; Title Insurance

Prudent purchasers of Bahamian land will obtain an opinion of title from a reputable member of the Bahamas Bar in connection with the consummation of the transaction. The attorney's opinion of title might state that the purchaser "has a good and marketable title to and is seised in unencumbered fee simple in possession" of the subject property. Fortunately, the number of assumptions, qualifications or exceptions in the typical Bahamian title opinion is usually minimal as compared to opinions of title by American lawyers. However, one qualification to the attorney's search for outstanding judgments or orders might be that the search of judgments or orders at the Supreme Court Registry is limited to entries on the index books that actually exist and that are legible. An exception often encountered is the "gap" exception. Under this exception, the opinion will be subject to the possibility that a document of title may have been lodged for record at the Registry prior to consummation, but was

---

133. Conveyancing and Law of Property Act, ch. 123, § 4 (1909) (Bah.). This procedure is not appropriate if either party is attacking the existence or validity of the agreement. *Id.*

134. *E.g., infra* Appendix B, para. 10 (The parenthetical reference, which states: "notwithstanding any attempt to remove or satisfy the same or any negotiations or litigation in respect thereof" (emphasis added), ought to be deleted.).

not yet indexed or otherwise made known to the public either at the time of the title search or at the time of recording. The "gap" exception is potentially more troublesome in The Bahamas than in American jurisdictions because of the longer time period between the submission of a document to the Registrar and its proper recordation.

One way to minimize the risks of relying on an attorney's opinion of title is to obtain title insurance,<sup>135</sup> which usually insures against many risks not covered by an attorney's opinion of title.<sup>136</sup> Title insurance is a new phenomenon in The Bahamas, and thus far its primary market has been nervous American purchasers.<sup>137</sup> As of this writing, the author is aware of two companies that will issue title insurance in respect of Bahamian land, First American Title Insurance Company and Lawyer's Title Insurance Corporation. While title insurance helps mitigate some transactional risks, it also presents questions and potential problems. For instance, the overall cost to the purchaser is greater because an attorney's opinion of title is still necessary, and because the title insurance company will rely upon the opinion, although this reliance should not be a special condition to the policy. As for the title insurance premium, it is not absolutely clear whether restricted or regulated rate structures applicable in some U.S. jurisdictions would be applicable with respect to the issuance of a title policy covering Bahamian land, but if not, the purchaser should be free to negotiate the premium.<sup>138</sup> Other issues arise under the standard forms of policies in use, such as the definition of "public records" and the appro-

---

135. Note, however, that with respect to the "gap" exception, this exception is usually part of the so-called "standard printed exceptions" (i.e., Schedule B—Section II) to the title insurance commitment and the purchaser should insist that the title agent do whatever it takes to cause this exception to be deleted. See THE FLORIDA BAR CONTINUING LEGAL EDUCATION, *supra* note 125, at 246-47.

136. See, e.g., THE FLORIDA BAR CONTINUING LEGAL EDUCATION, *supra* note 125, at 205-06; see generally D. BARLOW BURKE, JR., LAW OF TITLE INSURANCE (1986).

137. With the exception of American purchasers, whether title insurance—a peculiarly American institution—will become widespread in The Bahamas is open to considerable question. American title insurers have had little success in Canada and have been met with fierce resistance from solicitors in England. THOMPSON, *supra* note 94, § 93.01 n.5. After about a decade long effort to market title insurance in the United Kingdom, Chicago Title Insurance Company abandoned the effort in the mid 1980s. *Id.*

138. From a jurisdictional standpoint, the safest course to avoid the minimum rate structures of the purchaser's "home state" would be to ensure that the title policy is actually issued and delivered in The Bahamas through a Bahamian title agent.



priate governing law.<sup>139</sup> The purchaser of Bahamian real estate who wishes to obtain title insurance should, as in the United States, ensure that the agreement for sale and purchase specifically obligates the seller to deliver a title that is good, marketable, and insurable.<sup>140</sup>

### *E. Completion*

The consummation of the real estate purchase, referred to as the "closing" in the United States, is known as "completion" in The Bahamas. By custom, completion takes place at the office of the seller's attorney, though this is not essential. Prior to completion, the seller's attorney will have proffered a draft deed of conveyance to the purchaser's attorney for review and approval.<sup>141</sup> The deed will be executed and delivered at completion contemporaneous with the payment by the purchaser of the balance of the purchase price. In accordance with the English custom, at completion the seller hands over to the purchaser or the purchaser's lawyer the originals of all title deeds in the seller's possession that relate exclusively to the land being conveyed.<sup>142</sup>

---

139. By way of illustration, if Florida is chosen as the state of governing law and forum for disputes, the Florida court may find itself in the odd position of determining the nature and extent of a particular title defect under Bahamian law and practice. The alternative, of course, is to have Bahamian law govern. This would thrust the Bahamian Supreme Court in the even more absurd position of interpreting an American title insurance policy, which includes many real property and insurance precepts quite foreign to The Bahamas. The better result is to stick with the governing law and forum of an American jurisdiction.

140. FRIEDMAN, *supra* note 94, at 330. The full text of the requirement for insurable title might read: "good, marketable and insurable by \_\_\_\_\_ [insert name of title insurer] under \_\_\_\_\_ [insert type of policy, e.g., ALTA Owner's Policy—Form B—1970 (Amended 10-17-84)] at its standard rates and subject only to the usual printed exceptions thereon."

141. See, e.g., *infra* Appendix B, para. 13(b). Upon approval, the purchaser's counsel will advise the seller's attorney that the draft deed of conveyance may be "engrossed" (i.e., finalized).

142. The practice of a land owner retaining prior title deeds arose in England, because under traditional English practice deeds of conveyance and other instruments of title were not recorded. Since a land owner who had sold or mortgaged his land would have turned over custody of the title deeds to the purchaser or mortgagee, the fact that a land owner still retained custody of the title deeds presented some evidence—though far from absolute—that he or she had not sold or mortgaged the property described in the deeds. The practice continues today in The Bahamas even though such instruments are now normally recorded. KNOWLES, *supra* note 33, at 232. If an original title deed in the seller's possession relates not only to the real property sold, but also to other property, then the seller is entitled to retain possession of it (and will normally do so). *Id.* at 233.

*F. Non-Bahamian Purchasers***1. International Persons Landholding Act**

The acquisition of freehold or leasehold interests in real property by foreigners in The Bahamas is regulated under the International Persons Landholding Act.<sup>143</sup> A simplified procedure exists for non-Bahamian persons or entities<sup>144</sup> wishing to purchase or otherwise acquire an interest in (i) a condominium unit, (ii) an existing single family residence (intended to be used as such), or (iii) vacant land, with less than five contiguous acres, on which the purchaser (or lessee) intends to construct a single family dwelling.<sup>145</sup> Under this procedure, the prospective purchaser (or lessee) submits an application on the statutory form to the Secretary of the Investments Board,<sup>146</sup> along with a registration fee (currently \$25.00). Upon receipt of the completed application and the fee, the Secretary "shall register that purchase or acquisition in the register and issue a certificate to the applicant."<sup>147</sup> In other words, the process is supposed to be ministerial and in most instances it is. With respect to all other types of real properties, however, non-Bahamians must apply for a permit from the Investments Board itself, which may "in its abso-

---

In this instance, the purchaser is entitled to require the seller to provide the purchaser with a statutory written acknowledgment of the purchaser's right to compel the seller who retains possession of the deed to produce it whenever reasonably requested to do so for the purpose of proving or supporting the purchaser's title to the property. *Id.*; see Conveyancing and Law of Property Act § 9 (1909) (Bah.).

143. International Persons Landholding Act, 1993 (Bah.), *as amended* by International Persons Landholding (Amendment) Act, 1995 (Bah.). The International Persons Landholding Act replaced the earlier Immovable Property (Acquisition by Foreign Persons) Act (1981) (Bah.).

144. Under the Act, a non-Bahamian person is a person who is not a citizen of The Bahamas. *Id.* § 14(1). A non-Bahamian company is an entity (i) formed or incorporated outside of The Bahamas, or (ii) an entity which, although incorporated in The Bahamas, is not 100% beneficially (i.e., ultimately) owned by Bahamian citizens. *Id.*

145. *Id.* § 3.

146. The Investments Board, which is established by the Act, consists of the Prime Minister and any other Ministers he or she appoints. *Id.* § 12.

147. *Id.* § 3. A different section of the Act governs persons who are permanent residents of The Bahamas. Generally, permanent residents may acquire Bahamian property, whether commercial or residential, by making application to the Secretary and by paying the applicable fee. *Id.* § 3(2). If the residential use of the property is later changed, the non-Bahamian owner must apply for a permit from the Investments Board. *Id.* § 12(6).

lute discretion grant or refuse to grant a permit."<sup>148</sup>

The certificate issued by the Secretary or the permit issued by the Investments Board, as the case may be, must be recorded among the records of the Registrar General along with the deed of conveyance or indenture of lease.<sup>149</sup> Failure to record the certificate or permit means that the registration of the deed or indenture of lease "shall be null and void and be without effect for all purposes of law."<sup>150</sup>

## 2. Business License

In addition to the International Persons Landholding Act, any person wishing to conduct any business or commercial enterprise within The Bahamas must obtain a business license pursuant to the Business Licence Act.<sup>151</sup> A business that is one hundred percent Bahamian-owned<sup>152</sup> may commence its operations immediately upon filing its application with the Ministry of Finance.<sup>153</sup> By contrast, any business that is less than one hundred percent Bahamian must wait until its application has been approved, and such approval lies in the total discretion of the Minister of Finance.<sup>154</sup> Moreover, under governmental policy the operation of certain businesses has been expressly reserved for

---

148. *Id.* § 4. Notwithstanding this "absolute discretion" standard, the Act, like all Bahamian statutes, is subordinate to the Bahamian Constitution, and the exercise of this standard should, therefore, be subject to the principles of natural justice embodied in the Constitution. See *Ryan*, 1 App. Cas. at 718-19.

149. International Persons Landholding Act § 5.

150. *Id.* Interestingly, the statute does not state that the instrument itself is invalid to pass the freehold or leasehold estate it purports to convey. Since failure to register such an instrument, although inadvisable, does not affect the validity of the instrument between the parties *inter se*, the conveyance itself should still be valid. Consistent with this conclusion is Section 5(3) of the Act, which states that the "priority of the transactions relating to the acquisition of land by non-Bahamians shall be no different from that which relates to the acquisition of real property not affected by this Act." *Id.* § 5(3). Non-Bahamian purchasers who failed to timely obtain a certificate or permit under the Act may still apply for validation of their purchase to the Investments Board.

151. Business Licence Act, ch. 302, §§ 3, 6 (1980) (Bah.) as amended by Business Licence (Amendment) Act, 1994 (Bah.). There are a few exceptions to the Act. *Id.* §§ 7-8.

152. "Bahamian" in this context means a citizen of The Bahamas. *Id.* § 2. Thus, in the case of a corporation (i.e., company), 100% of all its shares must be beneficially (i.e., ultimately) owned by Bahamian citizens. *Id.*

153. *Id.* § 6.

154. *Id.* §§ 3, 6(1)-(2).

Bahamians,<sup>155</sup> while other businesses have been specifically targeted for foreign investment under the National Investment Policy.<sup>156</sup>

Under the new Local Government Act, business licenses in the Family Islands are issued by the local district council.<sup>157</sup> The Act requires payment of annual fees based upon gross sales<sup>158</sup> and has criminal penalties for violations of the Act.<sup>159</sup>

### 3. Exchange Control

The Exchange Control Department of The Central Bank of The Bahamas is responsible for exercising and administering control over foreign exchange operations with respect to The Bahamas.<sup>160</sup> For purposes of exchange control, persons (including

---

155. The reserved areas are:

(i) Wholesale and Retail Operations; (ii) Commission agencies engaged in the import/export/trade; (iii) Real estate and domestic [i.e., Bahamian] property management agencies; (iv) Domestic newspaper and magazine publication; (v) Domestic advertising and public relations firms; (vi) Nightclubs and restaurants, except specialty, gourmet and ethnic restaurants; restaurants operating in a hotel, resort complex or tourist attraction; (vii) Security services; (viii) Domestic distribution of building supplies; (ix) Construction companies, except for special structures for which international expertise is required; (x) Personal cosmetic/beauty establishment; (xi) Shallow water scale-fish, crustacea, mollusks and sponge-fishing operations; (xii) Auto and appliance service operations; and (xiii) Public transportation.

NATIONAL INVESTMENT POLICY, *supra* note 6, at 10-11. One should note that American national brands (e.g., McDonald's, Pizza Hut, etc.) may become established in The Bahamas through franchise arrangements with 100% Bahamian-owned companies.

156. The targeted areas are:

(i) Touristic Resorts; (ii) Upscale Condominium, Time share and Second Home Development; (iii) International Business Centre; (iv) Marinas; (v) Information and Data Processing Services; (vi) Assembly Industries; (vii) High-Tech Service; (viii) Ship Registration, Repair and other services; (ix) Light Manufacturing for export; (x) Agro-Industries; (xi) Food Processing; (xii) Mariculture; (xiii) Banking and other Financial Services; (xiv) Captive Insurance; (xv) Aircraft Services; (xvi) Pharmaceutical Manufacture; [and] (xvii) Off-shore Medical Centres.

*Id.*

157. Local Government Act, 1996, § 14(1)(d) (Bah.). An aggrieved applicant for business license may appeal the decision of a local district council to the Minister responsible for Family Island Affairs. *Id.* § 16.

158. See *supra* text accompanying notes 186-99.

159. Business Licence Act, ch. 302, §§ 14, 15, and 19 (1980) (Bah.) as amended by Business Licence (Amendment) Act, 1994 (Bah.).

160. The authority is derived under the Exchange Control Regulations Act (1952) (Bah.) and the Exchange Control Regulations, ch. 330, § 3 (1956) (Bah.).

legal entities) are considered either "resident" or "non-resident." Among other things, persons will be deemed "resident" if they engage in an active trade or business within The Bahamas or with residents of The Bahamas, even if they are foreign corporations.<sup>161</sup> "Resident" persons must operate their businesses within The Bahamas in Bahamian currency, and they must first obtain the permission of the Exchange Control Department before they maintain foreign currency accounts in The Bahamas or remit foreign currency outside The Bahamas.<sup>162</sup>

The most important initial aspect of exchange control regulations for the foreign purchaser of Bahamian real property is obtaining "approved investment status" from the Exchange Control Department. To obtain this status, all foreign investment of capital in The Bahamas should be registered with the Exchange Control Department. This is necessary so that the capital may be repatriated at a later time, such as when the property is sold. Even with "approved investment status," the approval of the Exchange Control Department will still be needed when capital or earnings are repatriated outside The Bahamas.<sup>163</sup> However, approval to those persons who previously obtained "approved investment status" is routinely given provided that the necessary formalities are followed; so legitimate investors should have nothing to fear from the process.<sup>164</sup>

### *G. Bahamian Taxation Structure*

The Bahamas is regarded as a "financial centre" jurisdiction.<sup>165</sup> Accordingly, no individual or entity, whether domestic or

---

161. Conversely, examples of persons deemed "non-resident" include (i) citizens of foreign countries who reside in The Bahamas, but who do not engage in a trade or business or gainful employment within The Bahamas, or (ii) companies which have an office in The Bahamas, but which do not transact business with Bahamian residents (e.g., IBCs). See Exchange Control Regulations § 41.

162. Exchange Control Regulations §§ 5-7.

163. *Id.* § 42.

164. Although there is no absolute guarantee that permission will be granted, absent a war or severe economic crisis it is extremely unlikely that repatriation would ultimately be denied because of the chilling effect such a decision would have on foreign investment. In addition, The Bahamas is a member of the International Monetary Fund, and under Article VIII of the Fund's Articles of Agreement, members must facilitate current payments and avoid restrictions on currency conversion and repatriation of capital and earnings. See HIGGINS, *supra* note 4, at 43.

165. Many still use the term "tax haven," but this expression is not preferred by the

foreign, operating or residing in The Bahamas, pays any direct tax (e.g., income, capital gain, withholding, inheritance or death duties). There are, however, indirect taxes, such as customs duties on imports and exports, stamp taxes, business license fees, real property tax, and other miscellaneous fees and taxes. In fact, over eighty percent of the revenue of the Bahamian government is derived from customs duties.<sup>166</sup>

## 1. Stamp Duty

In studying the American Revolution, virtually every young American student is taught that the words "Stamp Act" are synonymous with oppression and tyranny of the vilest sort, and that even though the detestable legislation was repealed by the British Parliament less than a year after its effective date, the "Stamp Act crisis" was a major catalyst for the American Revolution.<sup>167</sup> Nevertheless, the rebellion in America did not dissuade the British Parliament from enacting similar stamp duties in the British Empire, including The Bahamas.<sup>168</sup> Like its eight-

---

Bahamian government, since it has become somewhat pejorative, and the Bahamian government also wishes to emphasize the banking and financial services sector in The Bahamas.

166. BAHAMAS HANDBOOK, *supra* note 3, at 381.

167. See JOHN C. MILLER, ORIGINS OF THE AMERICAN REVOLUTION 110-64 (1943). The Stamp Act was enacted in January 1765 as a means to raise revenue to help pay for the enormous expenses associated with the French and Indian War. See *id.* at 89. The Act imposed a duty on virtually all legal documents (which were declared invalid without the stamp duty), newspapers, diplomas, and other goods. See *id.* at 110; see generally EDMUND S. MORGAN & HELEN M. MORGAN, THE STAMP ACT CRISIS: PROLOGUE TO REVOLUTION (rev. ed. 1963). Although many portions of the Stamp Act applied only to the American colonies on the continent, the Act also applied to Bahamian wills, deeds of conveyance regarding Bahamian land and other legal documents in The Bahamas. See PROLOGUE TO REVOLUTION: SOURCES AND DOCUMENTS ON THE STAMP ACT CRISIS, 1764-1766, at 38-39 (Edmund S. Morgan ed., rev. ed. 1973) [hereinafter SOURCES AND DOCUMENTS]. In The Bahamas, the local collector of the Stamp Act was dragged by a group of Bahamians to a graveyard, nailed into a coffin, lowered into a shallow hole and covered with dirt while still alive. After begging and crying he was released upon condition that he immediately resign from his post, which he did. BAHAMAS HANDBOOK, *supra* note 3, at 44. Ironically, it was not long after the founding of the American republic that the states enacted documentary stamp taxes on conveyances, and today every American state, along with the District of Columbia, has a form of conveyance tax. See 9 THOMPSON ON REAL PROPERTY § 76.08 (David A. Thomas ed., 1994). Presumably taxation with representation made all the difference.

168. Stamp Act, ch. 334 (1925) (Bah.). Interestingly, the opening section of the Bahamian Stamp Act states that it is for the "use and support of The Bahamas," which is conceptually similar to the preamble of the Stamp Act of 1765 (for the purpose of "further defraying the expences of defending, protecting, and securing" the American colonies).

eenth century predecessor, the Bahamian Stamp Act imposes a tax on a wide variety of legal documents, including transfer instruments regarding realty or personalty such as deeds of conveyance, assignments, and bills of sale. The Registrar General is prohibited from recording any deed or other instrument subject to stamp duty if the duty is not paid.<sup>169</sup> The current stamp tax duty on conveyances of real property is set forth below.<sup>170</sup>

<u>Amount of Consideration</u> <sup>171</sup>	<u>Stamp Tax Rate</u>
\$0 up to and including \$20,000	2%
\$20,000.01 up to and including \$50,000	4%
\$50,000.01 up to and including \$100,000	6%
Over \$100,000	8%

This rate structure is *not* graduated. For instance, a conveyance delivered for a consideration of \$250,000 will incur a stamp duty of \$20,000.<sup>172</sup> Although the stamp duty on conveyances to non-Bahamians was double the rates given above for many years, the "double duty" was repealed in 1993 at the behest of Prime Minister Ingraham's government in order to encourage foreign investment.<sup>173</sup>

With respect to deeds of conveyance or an assignment of an interest in personalty, each party to the transaction is jointly and severally liable to the government for payment of the tax.<sup>174</sup> Nevertheless, the parties may negotiate responsibility for payment of the duty *inter se*, or the parties may agree to split or otherwise share the expense. Customarily, the parties split responsibility for the tax equally.<sup>175</sup>

---

SOURCES AND DOCUMENTS, *supra* note 167, at 35.

169. Stamp Act § 21(3).

170. Stamp Act, sched. 2. Grants or leases issued by the Bahamian government (referred to as Crown grants or Crown leases) are exempt from stamp duty. *Id.* sched. 3.

171. All dollar amounts are given in Bahamian dollars. The Bahamian dollar trades at par with the U.S. dollar (although for large transactions involving American dollars, there may be a small conversion fee imposed by Bahamian banks).

172. The Act also imposes the same taxes on any portion of the overall consideration given with respect to chattels. *Id.* § 21(4).

173. International Persons Landholding Act, 1993, § 10 (Bah.).

174. Stamp Act § 14(2).

175. *See, e.g., infra* Appendix B, para. 20.

The Stamp Act is also drafted to foil clever schemes designed to avoid it. Although the transfer of shares in a Bahamian company is generally not subject to the stamp duty on deeds, the Stamp Act provides that if, through one or a series of transactions, the issued shares or other beneficial interest in a company that owns any Bahamian real property are assigned or transferred, then there shall be stamp duty payable (at the normal rates for real estate conveyances) upon the value of the real estate owned by the company in proportion to the quantity of shares or beneficial interest transferred.<sup>176</sup>

## 2. Real Property Taxes

Bahamian real property is assessed for taxation by the Chief Valuation Officer of The Bahamas (CVO) before October 15 of each year.<sup>177</sup> Consequently, the law requires owners of real property to file with the CVO a "Declaration of Real Property" on or prior to December 31 each year.<sup>178</sup> The CVO publishes notices of assessment in *The Gazette*, a legal organ of the Bahamian government, and in a daily newspaper of general circulation in The Bahamas.<sup>179</sup> The notice is deemed served five days after its publication.<sup>180</sup> Payment, which may be made quarterly or in lump sum, is due within sixty days after deemed service of the assessment notice.<sup>181</sup>

Bahamians are generally exempt from real property tax on unimproved land in New Providence and on improved or unimproved land situated in Grand Bahama or in any of the Family Islands.<sup>182</sup> The current tax rates, which are assessed upon

---

176. Stamp Act, sched. 2.

177. Real Property Tax Act, ch. 339, § 7 (1969) (Bah.).

178. *Id.* §§ 7, 8. Failure to file is a crime punishable by a fine of up to \$3,000. *Id.* § 8(2). Persons knowingly making false statements in connection with a return may be liable upon conviction to a fine up to \$3000, six months imprisonment, or both. *Id.* § 8(3). Notwithstanding the statutory requirement (and the aforesaid criminal penalties) that property owners must file real property tax returns on an annual basis, in practice the Chief Valuation Officer of The Bahamas only requires that real property tax returns be made if there has been a sale or other disposition of the property. A 10% surcharge is added to any tax not paid within 90 days after the date it becomes due. *Id.* § 17.

179. *Id.* § 7(2).

180. *Id.* § 7(3).

181. *Id.* § 16.

182. *Id.* § 39. "Bahamian" is defined as a citizen of The Bahamas or a company registered under the Companies Act and in which at least 60% of the shares are owned



"market value,"<sup>183</sup> are as follows:<sup>184</sup>

Owner occupied real property (residential)

First \$100,000 of market value	exempt
Over \$100,000 but not exceeding \$500,000 of market value	1%
Over \$500,000 of market value	1½%

Vacant land owned by non-Bahamians

First \$3,000 of market value	\$30
Over \$3,000 but not exceeding \$100,000 of market value	1%
Over \$100,000 of market value	1½%

All other properties/commercial:

First \$500,000 of market value	1%
Over \$500,000 of market value	2%

The real property tax constitutes a "first charge" (i.e., lien) upon the property.<sup>185</sup>

### 3. Business License Fees

With few exceptions, each business or commercial enterprise in The Bahamas must obtain an annual business license and pay annual fees in connection with the license.<sup>186</sup> The annual license

---

beneficially (i.e., ultimately) by Bahamian citizens. *Id.* § 2.

183. "Market value" is defined as the amount the property would realize if the fee simple estate in the property were sold in the open market by a willing seller to a reasonably well informed purchaser and without any encumbrances or restrictions. *Id.* § 2.

184. *Id.* §§ 3(2), 39.

185. *Id.* § 21.

186. Business Licence Act, ch. 302, §§ 3-6 (1980) (Bah.). Banks, insurance companies, IBC's, businesses operated in free-trade zones, export manufacturers, spirit and beer manufacturers, and casinos are exempt from paying the annual business license fee (but the foregoing do pay other fees and taxes not applicable to businesses generally). *Id.* §§ 7-8.

application and fees are due each year on or prior to April 30,<sup>187</sup> and applicants will need to demonstrate that they have paid any applicable real estate taxes with respect to the property on which the business is located.<sup>188</sup> The fees are generally based upon the business's "turnover" for the prior calendar year and therefore are similar to a corporate income tax.<sup>189</sup> "Turnover" is the total of all gross receipts of the business for the prior year "without any deductions whatsoever."<sup>190</sup> For purposes of the Act, businesses are divided into two sets of categories.<sup>191</sup> The first set of categories is based upon turnover and is as follows:<sup>192</sup>

<u>Amount of Turnover</u>	<u>Category of Business</u>
Up to \$50,000	Petty
\$50,000.01 to \$100,000	Very Small
\$100,000.01 to \$250,000	Small
\$250,000.01 to 1,000,000	Medium
\$1,000,000.01 to 28,000,000	Large
Over 28,000,000	Very Large

The second set of categories is based upon profitability, that is, the relationship of annual "gross profit" (which is defined as the turnover less the costs incurred in producing the turnover)<sup>193</sup> to turnover. The categories are as follows:<sup>194</sup>

---

187. *Id.* § 3.

188. *Id.* § 3(3)(d).

189. *Id.* § 4. The word "tax" is never used in the Act.

190. *Id.* § 2.

191. *Id.* § 4.

192. *Id.* § 4(2).

193. *Id.* §§ 2, 4. "Cost" is defined as any expenditure specifically prescribed in a schedule to the Act. *Id.* § 2. The permitted expenditures are based upon the type of business (e.g., retail/wholesale operations; manufacturing and processing, etc.). *Id.*

194. *Id.* § 4(3).

Annual Gross Profit/TurnoverProfit Classification

Gross profit not more than 25% of turnover	Low
Gross profit more than 25% but not more than 50%	Medium
Gross profit more than 50% but not more than 75%	High
Gross profit more than 75% of turnover	Very high

Using these two sets of categories, the rate structure for the annual business license fee is as follows:<sup>195</sup>

*BUSINESS LICENSE FEE SCHEDULE*

## PROFIT TURNOVER (ANNUAL SALES)

	<u>Petty</u> Under 50,000	<u>Very Small</u> 50,000.01- 100,000	<u>Small</u> 100,000.01- 250,000	<u>Medium</u> 250,000.01- 1,000,000	<u>Large</u> 1,000,000.01 -28,000,000	<u>Very Large</u> Over 28,000,000
Low (under 25%)	N/A	\$250	\$500	0.5% of turnover	0.5% of turnover	greater of 0.5% or \$140,000
Medium (25-50%)	N/A	\$500	\$750	1.0% of turnover	1.0% of turnover	greater of 1.0% of turnover or \$280,000
High (50-75%)	N/A	\$700	\$1,000	1.5% of turnover	1.5% of turnover	greater of 1.5% of turnover or \$420,000
Very High (over 75%)	N/A	\$800	\$1,250	1.5% of turnover	1.5% of turnover	greater of 1.5% of turnover or \$500,000

Businesses must maintain accounts and records for at least two years after the transaction date,<sup>196</sup> and these accounts and records are subject to audit.<sup>197</sup> The financial information reported by holders of a Bahamian business license is not public record and is subject to strict secrecy.<sup>198</sup> Moreover, it is a criminal offense for any governmental official to release any financial information regarding any such holder, except in the context of an action to enforce the provisions of the Act.<sup>199</sup>

---

195. *Id.* § 4(1)-(2).

196. *Id.* § 9(2)-(3).

197. *Id.* § 9A.

198. *Id.* § 24.

199. *Id.*

### H. Real Estate Brokers

The business of real estate agency is active in The Bahamas. Until 1995, real estate brokers and agents were not regulated as such in The Bahamas. Under the Real Estate (Brokers and Salesmen) Act, "real estate business" is broadly defined to include appraisal services, procurement of or assistance regarding sellers, purchasers, lessors, lessees, property management, and other related activities.<sup>200</sup> With few exceptions (e.g., attorneys engaging in normal real estate practice) anyone who engages in "real estate business" within the meaning of the Act must be licensed under the Act by the Real Estate Board of The Bahamas Real Estate Association.<sup>201</sup> The Act also incorporates disciplinary provisions regarding professional misconduct, which is defined to include dishonesty, gross negligence, incompetence, and failure to properly account for third-party funds in connection with a transaction.<sup>202</sup> In addition, real estate brokers and sales persons are obliged to hold any client or earnest money funds in trust and in a financial institution account that includes the word "client" in the account title.<sup>203</sup>

On New Providence, the customary commission for the sale of commercial or residential real property is ten percent of the purchase price for unimproved property, and six percent of the price for improved property.<sup>204</sup> On the Family Islands, the going rate is ten percent of the purchase price, irrespective of whether it is commercial or residential, improved or unimproved.<sup>205</sup> As in the United States, the commission should be paid by the seller. Nevertheless, the well-represented purchaser of a commercial property should not be reluctant under the right circumstances to make an offer to a seller based upon the broker taking a lower than agreed upon commission. A negotiation of this kind may

---

200. Real Estate (Brokers and Salesmen) Act, 1995, § 3(1) (Bah.).

201. *Id.* §§ 4(1), 5-10. Violation of the mandatory licensure section of the Act is subject to a \$3000 fine, 12 months imprisonment, or both. *Id.* § 4(2).

202. *Id.* § 26.

203. *Id.* §§ 38, 39. The Act uses the expression "on trust." *Id.* § 38. Although the Act requires that the funds be maintained in a client-designated account, it does not specifically prohibit commingling of funds with those of the broker or salesperson. *Id.* § 39. Compare, e.g., ROHAN ET AL., 10 REAL ESTATE BROKERAGE LAW AND PRACTICE § 3.03[2][e] (1996) ("Any funds that come to the hands of real estate agents should be separately accounted for and not commingled with the funds of the broker.").

204. BAHAMAS HANDBOOK, *supra* note 3, at 379.

205. *Id.*

proceed as follows: "But I have a contract for ten percent, and besides my contract is with the owner and not with you!" the broker might insist. To this the prospective purchaser might reply: "That's all very well, but do you wish to sell the property, or not?" As in the United States, the purchaser should ensure that he or she is not responsible for any commission in the event the sale is not completed for any reason, including default by the purchaser.

### *I. Attorneys*

The purchaser of Bahamian real property is advised to retain Bahamian legal counsel in connection with the purchase. Attorneys and the practice of law are regulated in The Bahamas.<sup>206</sup> Generally, the seller and the purchaser will each pay his or her own legal fees. The Bahamas Bar has promulgated a minimum rate schedule for conveyances of real property, which is based upon the underlying consideration.<sup>207</sup> Under prior rules of professional conduct pertaining to members of the Bahamas Bar, it was considered improper to charge less than the minimum rates, except in "special circumstances in particular cases."<sup>208</sup> However, under current law, it is no longer improper to charge lower rates.<sup>209</sup> Thus, unlike the situation in some civil law countries where the notary reigns supreme in land conveying and the rates are sacred, the Bahamian schedule is now merely advisory, although a few Bahamian counsel may need to be reminded of this fact, especially by seemingly unwitting foreign purchasers. Like any rate schedule in the context of a real property transaction, it suffers from the substantial defect that it

---

206. See Legal Profession Act, 1992 (Bah.) amended by Legal Profession (Amendment) Act, 1994 (Bah.). The Legal Profession Act replaced the Bahamas Bar Act (1971) (Bah.).

207. For conveyances of real property or assignments of personal property, the fees are as follows:

Fee:	<u>Amount of Consideration:</u>
2½%	Up to \$500,000
2%	Over \$500,000 up to \$1,000,000
1%	Over \$1,000,000 up to \$5,000,000
½%	Over \$5,000,000

Legal Fees Conveyance of Real Property.

208. Bahamas Bar (Code of Professional Conduct) Regulations, Rule X(3) (1981) (Bah.).

209. Legal Profession Act, 1992 § 28.

has no necessary relationship to the amount of work involved or value added. The better practice for purchasers is to negotiate specific hourly rates and charges on an up front basis with a maximum fee to be incurred, barring very unusual circumstances.

### *J. Development and Construction Matters*

#### 1. Building and Construction

Before building in The Bahamas (including repairs to existing buildings), one must apply for and obtain a building permit from the Buildings Control Officer in accordance with the Buildings Regulation Act.<sup>210</sup> In the Family Islands the functions of the Buildings Control Officer are exercised by the governing council of the local government district.<sup>211</sup> The particulars of the application process, which include payment of specified fees and submission of multiple copies of plans and specifications, are set out in the regulations promulgated under the Act.<sup>212</sup> The plans must be in accordance with the Bahamas Building Code,<sup>213</sup> and the project is subject to periodic inspection during construction.<sup>214</sup> Following completion of the work and a final inspection satisfactory to the Buildings Control Officer, the Officer will is-

---

210. Buildings Regulation Act, ch. 188, § 4(1) (1971) (Bah.).

211. Local Government Act, 1996 § 14(1)(b) (Bah.). Any person aggrieved by the decision of the council may appeal the decision to the Minister responsible for Family Island Affairs, who may confirm, modify or reverse the decision "as he may think just." *Id.* § 16.

212. See Buildings Regulation (General) Rules, ch. 188 (1971) (Bah.); Buildings Regulation (General) (Amendment) Rules, 1988 (Bah.); Buildings Regulation (General) (Amendment) Rules, 1993, ch. 188 (Bah.). Forms may be obtained from the Ministry of Public Works. The permit fees are as follows:

<u>Floor Area:</u>	<u>Cost of Permit:</u>
Less than 500 sq. ft.	\$10
500-1,000 sq. ft.	\$8 per 100 sq. ft.
1,001-1,500 sq. ft.	\$10 per 100 sq. ft.
1,501-5,000 sq. ft.	\$15 per 100 sq. ft.
5,001-10,000 sq. ft.	\$20 per 100 sq. ft.
Over 10,000 sq. ft.	\$25 per 100 sq. ft.

Buildings Regulation (General) (Amendment) Rules, 1988, sched. 1.

213. BAHAMAS BUILDING CODE (2d ed. 1987). The Bahamas Building Code is based upon the South Florida Building Code in use in Dade County, Florida. *Id.* at Foreword.

214. Buildings Regulation (General) Rules § 10 (1971) (Bah.).

sue an occupancy certificate.<sup>215</sup> It is illegal to use or occupy the improvements without the certificate.<sup>216</sup>

In 1997, the Bahamian Parliament enacted the Conservation and Protection of the Physical Landscape of The Bahamas Act.<sup>217</sup> As its name implies, the primary purpose of this legislation is to protect the physical landscape of The Bahamas by "preventing environmental degradation, flooding, denuding of hills, unnatural steep inclines and landslides."<sup>218</sup> The Act is also intended to regulate excavation,<sup>219</sup> mining, harvesting protected trees, removal of sand from beaches or sand dunes and any work which affects the coastline of The Bahamas.<sup>220</sup> Anyone wishing to engage in any of these activities must first obtain a permit from the newly created office of the Director of Physical Planning.<sup>221</sup> The particulars of the permit process are set forth in regulations promulgated pursuant to the Act.<sup>222</sup> Violators of the Act are subject to criminal penalties, including fines, imprisonment, or both.<sup>223</sup> Fortunately, however, in an effort to avoid regulatory duplication, the Act provides that it is inapplicable to "any building operation under and in accordance with the conditions of a building permit issued under the Buildings Regulation Act" (with the exception of canal excavation).<sup>224</sup> Thus, for instance, excavation work or trenching in connection with the construction of a building's foundation would not be subject to the Act if the project is already subject to a building permit under the Buildings Regulation Act.

---

215. Buildings Regulation Act § 9(1).

216. *Id.* § 9(3). There is authority for the Buildings Control Officer to issue a temporary occupancy certificate. Buildings Regulation (General) Rules, § 11(2).

217. Conservation and Protection of the Physical Landscape of The Bahamas Act, 1997 (Bah.).

218. *Id.* § 4(2)(a).

219. "Excavation" means "the revealing or extraction, by digging systematically into the ground, of physical natural resources (such as soil, rock, quarry, fill or sand)." *Id.* § 2. In other words, excavation means digging a hole or uncovering natural surface materials.

220. *Id.* §§ 3-5.

221. *Id.* §§ 7-9, 20-23.

222. Conservation and Protection of the Physical Landscape of the Bahamas Regulations, 1997 (Bah.).

223. Conservation and Protection of the Physical Landscape of The Bahamas Act, 1997 §§ 6(2)-(3), 10, 14(3), and 17(2).

224. *Id.* § 3(2)(c).

## 2. Town Planning

The equivalent of a zoning code or ordinance does not exist in The Bahamas. Nevertheless, under the Town Planning Act, it is unlawful to erect any building or to make any material change in the use of an existing building without the consent of the Town Planning Committee regarding the proposed use as well as the proposed size, extent, architectural style, and site position of the improvements.<sup>225</sup> The Committee is empowered to give preliminary approval of plans from the early phase of design.<sup>226</sup> In the Family Islands, the functions of the Committee are performed by a seven-member board appointed by the governing council of the local government district.<sup>227</sup>

## 3. Environmental Matters

In 1987, the Bahamian Parliament enacted the Environmental Health Act.<sup>228</sup> The Act, which is administered and enforced by the Department of Environmental Health Services under the Ministry of Health, is primarily concerned with threats to public health arising out of pollution, contaminants, improper sanitation, unwholesome food, and other hazards.<sup>229</sup> Regulations have been promulgated under the Act, but they are far less detailed than those promulgated by the U.S. Environmental Protection Agency.<sup>230</sup>

Beyond the Environmental Health Act, one looks in vain within the statute law of The Bahamas for further understanding of environmental matters. The answer, as is often the case

---

225. Town Planning Act, ch. 236, § 7(1) (1961) (Bah.). The Town Planning Committee is composed of seven persons appointed by the Governor-General on the advice of the Prime Minister. *Id.* § 3(1). The technical advisor to the Committee is the Director of Physical Planning, who is appointed by the Governor-General on the advice of the Public Service Commission. *Id.* § 4.

226. The preliminary approval is called "sanction in outline." *Id.* § 7(2).

227. Local Government Act, 1996, §§ 14(1)(a)(iii), 15(1) (Bah.). Any person aggrieved by the board's decision may appeal to the council of the local district, which may confirm, modify, or reverse the board's decision "as it may think just." *Id.* § 15(5)-(6). A further right of appeal from the decision of the council lies to the Minister responsible for Family Island Affairs, who may confirm, modify or reverse the council's decision "as he may think just." *Id.* § 16.

228. Environmental Health Act, ch. 217 (1987) (Bah.).

229. *Id.* §§ 7-17.

230. See Environmental Health (Fees for Services) Regulations, 1989 (Bah.).



with other governmental regulation in The Bahamas, lies in governmental policy. Prime Minister Ingraham has made environmental concerns a keystone of his National Investment Policy. Therefore, international investors in The Bahamas (who are encouraged to work through the Bahamas Investment Authority (BIA)) should include an environmental impact study in their proposal to the government.<sup>231</sup> The Prime Minister has also established the Bahamas Environment, Science and Technology Commission (BEST Commission), whose mission includes environmental review of proposed projects of significant scope in The Bahamas. The BEST Commission is composed of representatives from various Bahamian governmental agencies, including the Office of the Prime Minister, the Department of Environmental Health Services, the Department of Fisheries, the Bahamas National Trust (BNT), the Department of Lands and Surveys, the Port Department, and the Water and Sewerage Corporation. The BEST Commission is under the executive direction of a senior government post known as "Ambassador for the Environment."

One member of the BEST Commission, the BNT, was chartered by the government in 1959.<sup>232</sup> Its purpose is to promote the permanent preservation of lands, buildings, and marine areas of natural importance or beauty.<sup>233</sup> Among other powers and privileges, it is authorized to hold and administer real property for the benefit of The Bahamas.<sup>234</sup> The BNT administers over 320,000 acres in twelve national parks and protected areas.<sup>235</sup> In addition, the BNT has an important role in the government's environmental policy making and will advise the government on preservation and related matters.<sup>236</sup>

### *K. Governmental Concessions*

As mentioned previously, the National Investment Policy is administered by the BIA, which has been described as a "one-stop investment facilitator under the umbrella of the Office of

---

231. NATIONAL INVESTMENT POLICY, *supra* note 6, at 9.

232. Bahamas National Trust Act, ch. 355 (1959) (Bah.).

233. *Id.* § 4(1).

234. *Id.* § 4(2).

235. BAHAMAS HANDBOOK, *supra* note 3, at 256.

236. Bahamas National Trust Act § 4(4).

the Prime Minister.”<sup>237</sup> The role of the BIA includes, *inter alia* (i) “[a]dministering the National Investment Policy,” (ii) “[p]roviding assistance to international investors during the implementation of approved investment projects,” and (iii) “[c]oordinating investment matters with other government agencies.”<sup>238</sup> Executive control over the BIA rests with the National Economic Council, which is headed by the Prime Minister.<sup>239</sup>

Depending on the type and scope of project, significant investment incentives are available under various acts in The Bahamas, including: (i) the Export Manufacturing Industries Encouragement Act; (ii) the Industries Encouragement Act; (iii) the Agricultural Manufactories Act; (iv) the Tariff Act; (v) the Hotels Encouragement Act; and (vi) the Spirits and Beer Manufacturer Act.<sup>240</sup> The incentives available under these acts include exemption from the payment of customs duties on building materials, equipment and certain raw materials and of business license fees and real property taxes for up to twenty years. Since the customs duties on building and construction materials range from twenty to fifty percent of the cost or value thereof,<sup>241</sup> these incentives offer enormous potential savings.

### *L. Special Contingencies*

In addition to the usual pre-conditions to the purchaser's obligation to complete the purchase, the non-Bahamian purchaser must at least insist that his or her obligations to purchase the property be contingent upon his or her ability to obtain (i) an appropriate permit from the Investments Board under the International Persons Landholding Act, and (ii) “approved investor status” from the Exchange Control Department of The Central Bank of The Bahamas.<sup>242</sup> Other areas whereby the purchaser may need to make its contract obligations contingent upon the purchaser obtaining certain approvals or assurances are: (i) a building permit under the Buildings Regulation Act; (ii) approval

---

237. BAHAMAS HANDBOOK, *supra* note 3, at 256.

238. *Id.*

239. NATIONAL INVESTMENT POLICY, *supra* note 6, at 8.

240. *Id.*

241. See generally Tariff Act, 1996 (Bah.).

242. See *supra* text accompanying notes 159-62.

under the Town Planning Act; (iii) written confirmation of certain investment incentives from the BIA; (iv) receipt of business license; and (v) approval in principal of environmental matters (either through the BIA or BEST). If the seller can be persuaded to accept all or some of these contingencies, the seller is likely to require that application for these approvals or assurances be made within a specified time, that the purchaser continuously and diligently pursue them, that the purchaser keep the seller closely informed of the purchaser's progress regarding them and finally, that if the approvals or assurances are not obtained by a particular time, the seller may refund the purchaser's deposit and cancel and terminate the agreement. With respect to the last of these—the seller's right to cancel and terminate the agreement—the purchaser should insist that the agreement state that the purchaser may waive any outstanding or unsatisfied contingencies and proceed to completion. Obviously, the purchaser should waive these contingencies only after careful deliberation, but it is quite possible that the purchaser will have received sufficient informal assurances from the BIA or the governmental agency in question to enable the purchaser to proceed without significant risk.

### *M. Execution of the Agreement*

The agreement for purchase and sale should be executed by both parties. Execution may, but need not, be under seal. While it is not legally required that each party's execution of the agreement be attested by a witness, this is common practice in The Bahamas. Furthermore, it is also not necessary that the witnesses make an affidavit before a notary public or other authorized person, but parties who prefer the additional proof of proper execution or who wish to record the agreement for purchase and sale in the Registry of Records may request affidavits.

## V. CONCLUSION

Although this article is not intended as a substitute for hiring Bahamian legal counsel in connection with the purchase of real property in The Bahamas, it is hoped that this article will have provided the American legal practitioner with a basic understanding of the Bahamian law of real property as it relates to the acquisition of real property and that it will have enabled the

practitioner to avoid troublesome or even embarrassing misunderstandings with his or her Bahamian professional counterparts.

VI. APPENDIX A: COMPARATIVE GLOSSARY OF SELECTED  
AMERICAN AND BAHAMIAN REAL ESTATE TERMINOLOGY

<i>American</i>	<i>Bahamian</i>
all of seller's right, title, and interest ( <i>typically defined as "the Property," etc.</i> )	hereditaments
closing	completion
earnest money deposit	deposit
escrow agent	stakeholder
warranties of title	conveyance as beneficial owner
seller	vendor
to produce sufficient title ( <i>as required by law / contract</i> )	to deduce proper title
title report	abstract or epitome of title
title objections	requisitions on title

## VII. APPENDIX B: AGREEMENT FOR SALE AND PURCHASE OF VACANT LAND

### AGREEMENT FOR SALE AND PURCHASE OF VACANT LAND

#### COMMONWEALTH OF THE BAHAMAS

New Providence.

THIS AGREEMENT is made upon the date shown in No. 1 of the Schedule hereto between the parties respectively described as "the Vendors" and "the Purchaser" in No. 2 and No. 3 of the Schedule hereto.

WHEREBY IT IS AGREED as follows:

1. The Vendors shall sell and the Purchaser shall purchase the fee simple estate in possession of the hereditaments described in No. 8 of the Schedule hereto together with all appurtenances thereunto belonging (hereinafter referred to as "the said hereditaments").

2. The said hereditaments are being sold subject to the restrictions and conditions (if any) described in No. 7 of the Schedule hereto but otherwise free from encumbrances.

3. The purchase price for the said hereditaments shall be the sum described in No. 4 of the Schedule hereto and upon execution of this Agreement a deposit of the sum described in No. 5 of the Schedule hereto (hereinafter referred to as "the deposit") shall be paid to the Vendors' Attorney as stakeholder and in part payment of the above purchase price.

4. The date for completion of the above sale shall be on or before the date described in No. 6 of the Schedule hereto. If the parties shall agree in writing on another date for the completion of the sale that date shall be known as the completion date (hereinafter in either case referred to as "the Completion Date").

5. The Vendors sell as Beneficial Owner.

6. Within Fourteen (14) days from the date hereof the Vendors shall produce or cause to be produced to the Purchaser or his Attorney all of the documents of title in the Vendors' possession relating to the said hereditaments and such other information as the Purchaser or his Attorney shall reasonably require to deduce from a good root of title in accordance with the provisions of The Conveyancing and Law of Property Act a good and marketable documentary title in fee simple subject as hereinafter appearing but otherwise free from encumbrances.

7. Notwithstanding the provisions of Section Three (3) sub-sections Five (5) and Nine (9) of the said Conveyancing and Law of Property Act the Vendors shall not be obliged to produce an Abstract of Title in respect of the said hereditaments unless requested in writing to do so by the Purchaser within Fourteen (14) days from the delivery of all the said documents and other information.

8. The foregoing provisions do not exempt the Vendors from answering requisitions on title properly raised by the Purchaser or his Attorney.

9. Requisitions and objections (if any) in respect of the title or description of the said hereditaments or otherwise arising out of this Agreement shall be delivered in writing to the Vendors' Attorney within Twenty-one (21) days from the delivery of all the said documents and other information.

10. Should any requisition or objection whatsoever be insisted on which the Vendors shall be unable or unwilling to satisfy or comply with the Vendors may (notwithstanding any attempt to remove or satisfy the same or any negotiations or litigation in respect thereof) by notice in writing to the Purchaser or his Attorney rescind this Agreement upon repaying the said deposit without interest costs or compensation to the Purchaser who shall accept the same in full satisfaction of all claims hereunder or otherwise howsoever. The Purchaser shall thereupon return or cause to be returned to the Vendors the abstract and all documents of title (if any) produced to the Purchaser or his Attorney and all papers belonging to the Vendors in his possession in connection with this sale and this Agreement shall be canceled without further or other liability by any party to the other. If the Purchaser within Seven (7) days after receiving notice to rescind withdraws the objection or requisition the notice to rescind shall be withdrawn also.

11. If the Vendors shall deduce such title to the said hereditaments as is provided for in this Agreement in accordance with the provisions hereof and shall be ready able and willing in accordance with such provisions to deliver the assurance hereinafter provided for and the Purchaser nevertheless fails to complete the purchase in accordance with the terms hereof the said deposit and any interest earned thereon at the option of the Vendors (but without prejudice to any of the Vendors' alternative remedies by way of damages specific performance or otherwise) shall be forfeited to the Vendors in complete liquidation of all damages caused by such failure whereupon this Agreement shall be canceled without further or other liability by any party to the other save the Purchaser shall return or cause to be returned to the Vendors all documents of title and all papers belonging to the Vendors as shall have been produced to the Purchaser or his Attorney as hereinbefore provided.

12. If the Purchaser shall be ready able and willing to complete and the Vendors shall fail to deduce such title to the said hereditaments as is provided for in this Agreement in accordance with the provisions hereof or shall fail to deliver the assurance hereinafter provided for then the Purchaser may (but without prejudice if the Purchaser so elects to any of the Purchaser's alternative remedies by way of damages specific performance or otherwise) require that the said deposit shall be returned to the Purchaser with any interest earned thereon whereupon this Agreement shall be canceled without further or other liability by any party to the other save the Purchaser shall return or cause to be returned to the Vendors all documents of title together with all other papers as aforesaid.

13. Upon completion:

(a) The Purchaser shall pay to or cause to be paid to the Vendors' Attorney the sum being the balance of the said purchase price; and

(b) Upon payment of the balance of the said purchase price as aforesaid the Vendors' Attorney shall deliver to the Purchaser or his Attorney a proper assurance of the said hereditaments in favour of the Purchaser or his nominee duly executed by the Vendors but shall be in a form approved by the Purchaser's Attorney (such approval not to be unreasonably withheld) and a draft of which said assurance shall be submitted to such Attorney at least Seven (7) days before the Completion Date.

14. If the purchase is not completed on the Completion Date this Agreement shall nevertheless (subject as hereinafter provided) continue in full force and effect unless one of the parties hereto shall serve upon the other Twenty-one (21) days' notice to complete (of which time shall be deemed to be of the essence) and the party shall at the end of Twenty-one (21) days after receipt of such notice have failed to complete in accordance with this Agreement.

15. The completion of the purchase and the payment of the balance of the purchase price shall take place on the Completion Date at the office of \_\_\_\_\_, Nassau in the said Island of New Providence the Vendors' Attorney.

16. Upon completion of the purchase the Purchaser shall be entitled to vacant possession of the said hereditaments and shall be responsible for the payment of all taxes rates assessments and outgoings after the Completion Date such taxes rates assessments and outgoings to be apportioned where necessary and to be paid in full by the Vendors up to and including the Completion Date.

17. Any notice which is required to be served hereunder shall be served on the Vendors by delivery to the law offices of \_\_\_\_\_ and any notice which is required to be served on the Purchaser by delivery to his Attorney.

18. The Vendors will pay any real estate agents' commission or finder's fee.



19. Each party will bear his own legal fees with respect to this transaction.
20. Stamp duty on the conveyance of the said hereditaments shall be borne equally by the parties.
21. In the interpretation of these presents words importing persons shall include corporations the masculine gender shall include the feminine and neuter gender and words importing the singular number only shall include the plural number and vice versa.

THE SCHEDULE HEREINBEFORE REFERRED TO

1. Date of Agreement:
2. Vendors:  
Address:
3. Purchaser:  
Address:
4. Purchase Price:
5. Deposit:
6. Completion Date:
7. Restrictions and Conditions:
8. Description of the said hereditaments:

IN WITNESS WHEREOF the Vendors have hereunto set their  
respective hands and seals this \_\_\_\_\_ day of A.D., 19\_\_.

\_\_\_\_\_  
\_\_\_\_\_

Signed Sealed and Delivered by the above-named  
in the presence of:

\_\_\_\_\_

IN WITNESS WHEREOF the Purchaser has hereunto set his  
hand and seal this \_\_\_\_\_ day of A.D., 19\_\_.

\_\_\_\_\_

Signed Sealed and Delivered by the above-named  
in the presence of:

\_\_\_\_\_